

REFERENCE TITLE: insurance policies; electronic notices

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

## **SB 1222**

Introduced by  
Senator Farnsworth D

AN ACT

AMENDING TITLE 20, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-239; TRANSFERRING AND RENUMBERING SECTION 20-398.01, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 20, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, AS SECTION 20-240; AMENDING SECTION 20-240, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; RELATING TO THE 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. Title 20, chapter 2, article 1, Arizona Revised Statutes,  
3 is amended by adding section 20-239, to 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 UNDER  
7 THIS TITLE IN AN INSURANCE TRANSACTION OR THAT IS TO SERVE AS EVIDENCE OF  
8 INSURANCE COVERAGE MAY BE DELIVERED, STORED AND PRESENTED BY ELECTRONIC MEANS  
9 IF IT MEETS THE REQUIREMENTS OF TITLE 44, CHAPTER 26, ARTICLE 1.

10 B. DELIVERY OF A NOTICE OR DOCUMENT PURSUANT TO THIS SECTION IS  
11 EQUIVALENT TO ANY DELIVERY METHOD REQUIRED UNDER THIS TITLE, INCLUDING  
12 DELIVERY BY THE UNITED STATES POSTAL SERVICE BY FIRST CLASS MAIL, POSTAGE  
13 PREPAID, CERTIFIED MAIL OR CERTIFICATE OF MAILING.

14 C. AN INSURER MAY DELIVER A NOTICE OR DOCUMENT BY ELECTRONIC MEANS TO  
15 A PARTY PURSUANT TO THIS SECTION IF ALL OF THE FOLLOWING CONDITIONS EXIST:

16 1. THE PARTY AFFIRMATIVELY CONSENTS TO THAT METHOD OF ELECTRONIC  
17 DELIVERY AND HAS NOT WITHDRAWN CONSENT.

18 2. BEFORE GIVING CONSENT, THE PARTY IS PROVIDED WITH A CLEAR AND  
19 CONSPICUOUS STATEMENT INFORMING THE PARTY OF:

20 (a) THE PARTY'S RIGHT OR OPTION TO HAVE THE NOTICE OR DOCUMENT  
21 PROVIDED OR MADE AVAILABLE IN PAPER OR ANOTHER NONELECTRONIC FORM.

22 (b) THE PARTY'S RIGHT TO WITHDRAW CONSENT TO HAVE A NOTICE OR DOCUMENT  
23 DELIVERED BY ELECTRONIC MEANS AND ANY FEES, CONDITIONS OR CONSEQUENCES  
24 IMPOSED IF CONSENT IS WITHDRAWN.

25 (c) WHETHER THE PARTY'S CONSENT APPLIES:

26 (i) ONLY TO THE PARTICULAR TRANSACTION AS TO WHICH THE NOTICE OR  
27 DOCUMENT MUST BE GIVEN.

28 (ii) TO IDENTIFIED CATEGORIES OF NOTICES OR DOCUMENTS THAT MAY BE  
29 DELIVERED BY ELECTRONIC MEANS DURING THE COURSE OF THE PARTIES' RELATIONSHIP.

30 (d) AFTER CONSENT IS GIVEN, THE MEANS BY WHICH A PARTY MAY OBTAIN A  
31 PAPER COPY OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS.

32 (e) THE FEE, IF ANY, FOR THE PAPER COPY.

33 (f) THE PROCEDURE FOR WITHDRAWING CONSENT TO HAVE A NOTICE OR DOCUMENT  
34 DELIVERED BY ELECTRONIC MEANS AND FOR UPDATING INFORMATION NEEDED TO CONTACT  
35 THE PARTY ELECTRONICALLY.

36 3. THE PARTY:

37 (a) BEFORE GIVING CONSENT, IS INFORMED OF THE HARDWARE AND SOFTWARE  
38 REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR DOCUMENT DELIVERED BY  
39 ELECTRONIC MEANS.

40 (b) CONSENTS ELECTRONICALLY, OR CONFIRMS CONSENT ELECTRONICALLY, IN A  
41 MANNER THAT REASONABLY DEMONSTRATES THAT THE PARTY CAN ACCESS INFORMATION IN  
42 THE ELECTRONIC FORMAT THAT WILL BE USED FOR NOTICES OR DOCUMENTS DELIVERED BY  
43 ELECTRONIC MEANS.

44 D. AFTER THE PARTY GIVES CONSENT, IF A CHANGE IN THE HARDWARE OR  
45 SOFTWARE REQUIREMENTS NEEDED TO ACCESS OR RETAIN A NOTICE OR DOCUMENT

1 DELIVERED BY ELECTRONIC MEANS CREATES A MATERIAL RISK THAT THE PARTY WILL NOT  
2 BE ABLE TO ACCESS OR RETAIN A SUBSEQUENT NOTICE OR DOCUMENT TO WHICH THE  
3 CONSENT APPLIES, THE INSURER MUST DO BOTH OF THE FOLLOWING:

4 1. INFORM THE PARTY OF:

5 (a) THE REVISED HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO AND  
6 RETENTION OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS.

7 (b) THE PARTY'S RIGHT TO WITHDRAW CONSENT WITHOUT THE IMPOSITION OF  
8 ANY FEE, CONDITION OR CONSEQUENCE THAT WAS NOT DISCLOSED UNDER SUBSECTION C,  
9 PARAGRAPH 2, SUBDIVISION (b) OF THIS SECTION.

10 2. COMPLY WITH SUBSECTION C OF THIS SECTION.

11 E. THIS SECTION DOES NOT AFFECT THE REQUIREMENTS RELATED TO CONTENT OR  
12 TIMING OF ANY NOTICE OR DOCUMENT REQUIRED UNDER THIS TITLE.

13 F. IF A PROVISION OF THIS TITLE EXPRESSLY REQUIRES VERIFICATION OR  
14 ACKNOWLEDGMENT OF RECEIPT OF A NOTICE OR DOCUMENT, THE NOTICE OR DOCUMENT MAY  
15 BE DELIVERED BY ELECTRONIC MEANS ONLY IF THE METHOD USED PROVIDES FOR  
16 VERIFICATION OR ACKNOWLEDGMENT OF RECEIPT.

17 G. THE LEGAL EFFECTIVENESS, VALIDITY OR ENFORCEABILITY OF ANY  
18 INSURANCE CONTRACT OR POLICY EXECUTED BY A PARTY MAY NOT BE DENIED SOLELY  
19 BECAUSE THE INSURER FAILED TO OBTAIN ELECTRONIC CONSENT OR CONFIRMATION OF  
20 CONSENT AS PRESCRIBED BY SUBSECTION C, PARAGRAPH 3, SUBDIVISION (b) OF THIS  
21 SECTION.

22 H. A PARTY'S WITHDRAWAL OF CONSENT:

23 1. DOES NOT AFFECT THE LEGAL EFFECTIVENESS, VALIDITY OR ENFORCEABILITY  
24 OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS TO THE PARTY BEFORE THE  
25 WITHDRAWAL OF CONSENT IS EFFECTIVE.

26 2. IS EFFECTIVE WITHIN A REASONABLE PERIOD OF TIME AFTER THE INSURER  
27 RECEIVES THE WITHDRAWAL.

28 I. IF AN INSURER FAILS TO COMPLY WITH SUBSECTION D OF THIS SECTION,  
29 THE PARTY MAY TREAT THAT FAILURE AS A WITHDRAWAL OF CONSENT FOR THE PURPOSES  
30 OF THIS SECTION.

31 J. THIS SECTION DOES NOT APPLY TO A NOTICE OR DOCUMENT DELIVERED BY AN  
32 INSURER IN AN ELECTRONIC FORMAT BEFORE THE EFFECTIVE DATE OF THIS SECTION TO  
33 A PARTY WHO, BEFORE THAT DATE, HAS CONSENTED TO RECEIVE A NOTICE OR DOCUMENT  
34 IN AN ELECTRONIC FORMAT AS OTHERWISE PROVIDED BY LAW.

35 K. IF A PARTY'S CONSENT TO RECEIVE CERTAIN NOTICES OR DOCUMENTS IN AN  
36 ELECTRONIC FORMAT IS ON FILE WITH AN INSURER BEFORE THE EFFECTIVE DATE OF  
37 THIS SECTION AND THE INSURER INTENDS TO DELIVER ADDITIONAL NOTICES OR  
38 DOCUMENTS TO THAT PARTY IN AN ELECTRONIC FORMAT PURSUANT TO THIS SECTION,  
39 BEFORE DELIVERING THE ADDITIONAL NOTICES OR DOCUMENTS ELECTRONICALLY THE  
40 INSURER MUST NOTIFY THE PARTY OF BOTH OF THE FOLLOWING:

41 1. THE NOTICES OR DOCUMENTS THAT MAY BE DELIVERED BY ELECTRONIC MEANS  
42 UNDER THIS SECTION THAT WERE NOT PREVIOUSLY DELIVERED ELECTRONICALLY.

43 2. THE PARTY'S RIGHT TO WITHDRAW CONSENT TO HAVE NOTICES OR DOCUMENTS  
44 DELIVERED BY ELECTRONIC MEANS.

1 L. EXCEPT AS OTHERWISE PROVIDED BY LAW AND FOR THE PURPOSES OF THIS  
2 SECTION, IF AN INSURER CAN RELIABLY STORE AND REPRODUCE AN ORAL COMMUNICATION  
3 OR A RECORDING OF AN ORAL COMMUNICATION FROM A PARTY, THE ORAL COMMUNICATION  
4 OR RECORDING MAY QUALIFY AS A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC  
5 MEANS.

6 M. IF A PROVISION OF THIS TITLE REQUIRES A SIGNATURE OR NOTICE OR  
7 DOCUMENT TO BE NOTARIZED, ACKNOWLEDGED, VERIFIED OR MADE UNDER OATH, THE  
8 REQUIREMENT IS SATISFIED IF THE ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED  
9 TO PERFORM THOSE ACTS, TOGETHER WITH ALL OTHER INFORMATION REQUIRED TO BE  
10 INCLUDED, IS ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE SIGNATURE, NOTICE  
11 OR DOCUMENT.

12 N. THIS SECTION APPLIES ONLY TO PROPERTY, CASUALTY AND LIFE INSURANCE  
13 POLICIES THAT ARE SUBJECT TO THIS TITLE.

14 O. THIS SECTION DOES NOT MODIFY, LIMIT OR SUPERSEDE THE ELECTRONIC  
15 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (P.L. 106-229; 15 UNITED  
16 STATES CODE SECTION 7001)

17 P. FOR THE PURPOSES OF THIS SECTION:

18 1. "DELIVERED BY ELECTRONIC MEANS" INCLUDES EITHER:

19 (a) THE DELIVERY TO AN E-MAIL ADDRESS AT WHICH A PARTY HAS CONSENTED TO  
20 RECEIVE NOTICES OR DOCUMENTS.

21 (b) THE POSTING ON AN ELECTRONIC NETWORK OR SITE ACCESSIBLE VIA THE  
22 INTERNET, MOBILE APPLICATION, COMPUTER, MOBILE DEVICE, TABLET OR OTHER  
23 ELECTRONIC DEVICE, TOGETHER WITH A SEPARATE NOTICE OF THE POSTING THAT IS  
24 PROVIDED BY ELECTRONIC MAIL TO THE E-MAIL ADDRESS AT WHICH THE PARTY HAS  
25 CONSENTED TO RECEIVE NOTICE OR BY ANY OTHER DELIVERY METHOD THAT HAS BEEN  
26 CONSENTED TO BY THE PARTY.

27 2. "PARTY" MEANS A RECIPIENT OF ANY NOTICE OR DOCUMENT AS PART OF AN  
28 INSURANCE TRANSACTION, INCLUDING AN APPLICANT, AN INSURED, A POLICYHOLDER OR  
29 AN ANNUITY CONTRACT HOLDER.

30 Sec. 2. Section 20-398.01, Arizona Revised Statutes, is transferred  
31 and renumbered for placement in title 20, chapter 2, article 1, Arizona  
32 Revised Statutes, as section 20-240 and, as so renumbered, is amended to  
33 read:

34 20-240. Electronic posting of policies; definitions

35 A. NOTWITHSTANDING SECTION 20-239, an insurer may post property and  
36 casualty insurance policies and endorsements that are subject to ~~this~~ article  
37 4.1 OF THIS CHAPTER pursuant to section 20-382 on the insurer's website  
38 instead of mailing or delivering the policies and endorsements to the  
39 insured, if all of the following conditions are satisfied:

40 1. The policies and endorsements posted by the insurer on its website  
41 do not contain personal information or privileged information.

42 2. The insurer makes accessible each policy and endorsement:

43 (a) On the insurer's website while each policy and endorsement remains  
44 in use.

1 (b) For a period of five years after the policy or endorsement is  
2 discontinued by the insurer.

3 3. The insurer posts its policies and endorsements on the insurer's  
4 website in a manner that enables the insured to print and save a copy of the  
5 policy and endorsements using programs and applications that are widely  
6 available on the internet and free of charge to use.

7 4. The insurer agrees to respond to requests from the insured in a  
8 timely manner and to provide notice in the manner that the insurer  
9 customarily communicates with an insured:

10 (a) At the time of issuance of the initial policy forms and any  
11 renewal forms of a method by which the insured may obtain, on request and  
12 without charge, a paper or electronic copy of the insured's policy or  
13 endorsement.

14 (b) Of any changes to the forms or endorsements, and of the insured's  
15 right to obtain, on request and without charge, a paper or electronic copy of  
16 the forms and endorsements.

17 (c) Of the insurer's specific website address and instructions on how  
18 to access the referenced policy and endorsement forms on the insurer's  
19 website.

20 5. On each declarations page delivered to an insured, the insurer  
21 clearly identifies the exact policy and endorsement forms purchased by the  
22 insured.

23 B. For the purposes of this section, "personal information" and  
24 "privileged information" have the same meanings prescribed in section  
25 20-2102.