



Conducting Consumer Transactions Electronically

There are several provisions in insurance laws (Appendix A) that are unclear about or prohibit insurers from delivering insurance documents to consumers online. These provisions prescribe how insurance documents are to be communicated and transmitted.

Insurers in Ontario are trying to meet customer demands for online service as much as possible. Online insurers are emerging in the province that allow consumers to obtain quotes and buy insurance using a computer or smartphone. However, insurance laws and regulations still prevent insurers from modernizing many of their processes to reflect current and emerging technological capabilities that would allow insurers to give customers a more comprehensive online experience. These rules not only dictate what is expected, but are technology-prescriptive in how insurers must comply. This is especially true concerning the transmission of insurance information and documents, such as the Ontario auto insurance policy and proof of auto insurance, both of which have to be sent annually and are only valid in paper format.

Preventing insurers from fully applying current and emerging online capabilities prevents them from improving the insurance experience for their customers. The provincial government recognized this limitation in its 2017 budget by announcing a commitment to allowing consumers to choose to receive their insurance documentation electronically. This commitment has not yet been implemented.

The logo for Lemonade, featuring the word "Lemonade" in a white, cursive font on a pink rectangular background.

As far as regulators are concerned, **Lemonade** is a traditional insurer. But founded by two “techies” and backed by venture capital, it is anything but traditional. Lemonade’s founders describe it as a “tech company doing insurance, not an insurance company doing an app.”

The completely online experience means **customers can sign up for insurance in 90 seconds and get compensated for a claim in 3 minutes.** Policies are sent via email and all other interactions, including cancellations and claims, can be done through the app or the website.

Lemonade has turned the insurance policy into a ‘live’ document that can easily be modified. With Live Policy, Lemonade customers can make changes to their coverages and more, instantly.

This New York-based licensed insurer is currently offering a combination of tenant’s, condo and homeowner’s insurance in eight states.

Electronic Communications and Transactions

The *Insurance Act* and the corresponding regulations still require that insurers and customers communicate certain information only by mail, registered mail, delivery or personal delivery.

This requirement persists despite the Ontario government passing the *Electronic Commerce Act* in 2000 to remove barriers to electronic commerce. This act gives electronic contracts the same legal status as their paper counterparts and sets out how businesses collect, deliver and use information and documents electronically. Although the act applies to almost all businesses that operate in the province, it does not override provisions in other acts, such as the *Insurance Act*, which prescribes the means by which insurers and their customers may interact. For consumers who prefer electronic over traditional communication, these limitations can be frustrating.

There are **36 states, plus Washington D.C.**, that permit insurers and their customers to **conduct all transactions online**, with the customer's consent.



In the United States, more than two-thirds of jurisdictions allow consumers to choose to receive all insurance documentation electronically. This ability to choose also applies to the more sensitive insurance documents, such as cancellation notices. That is because for many consumers, receiving even sensitive documents electronically is preferable to, and more reliable than, traditional mail or in-person delivery. In several states, there are no specific provisions that place additional obligations on insurers when it comes to sending cancellation notices. However, in several other states, there are additional requirements for these notices.

ELECTRONIC COMMUNICATIONS AND TRANSACTIONS IN U.S. JURISDICTIONS

In **Georgia**, when a consumer chooses to receive insurance documentation electronically, the *Georgia Code* mandates that insurers use prescribed language, which specifies that this choice applies to cancellation notices. The prescribed language includes the following.

(2) The insured agrees to receive mailings electronically by signing a statement which reads: "I agree to receive all mailings and communications electronically. Such electronic mailing or communications may even include cancellation or nonrenewal notices."

A consumer can sign this agreement physically or electronically.

In **California**, the additional requirements for cancellation notices consist of insurers being able to demonstrate proof of delivery. The *California Insurance Code* prescribes that an insurer may demonstrate delivery and receipt by any of the following means.

(7) (A) *The person acknowledges receipt of the electronic transmission of the record by returning an electronic receipt or by executing an electronic signature.*

(B) *The record is made part of, or attached to, an email sent to the email address designated by the person, and there is a confirmation receipt, or some other evidence that the person received the email in his or her email account and opened the email.*

(C) *The record is posted on the licensee's secure Internet Web site, and there is evidence demonstrating that the person logged onto the licensee's secure Internet Web site and downloaded, printed, or otherwise acknowledged receipt of the record.*

In the event that the insurer is unable to demonstrate delivery and receipt of the notice, the insurer is required to resend the notice by regular mail to the customer.

(D) *If a licensee is unable to demonstrate actual delivery and receipt pursuant to this paragraph, the licensee shall resend the record by regular mail to the person in the manner originally specified by the underlying provision of this code.*

RECOMMENDATION:

IBC recommends amending the *Insurance Act* and the corresponding regulations to explicitly state that all insurance communications and transactions, including cancellation notices, can be completed electronically if the consumer provides the necessary consent, as required in the *Electronic Commerce Act*.

A specific addition to the *Insurance Act* could be as follows:

33(1.1) For the purposes of Section 125, Section, 134(3), Section 135(1), Section 148(5)(1) and (15), Section 228, Section 232(1),(2),(3) and (5), Section 237, Section 238, Section 269(1) and (2), Section 273(1) and (2), Ontario Regulation 283/95 Disputes Between Insurers, Ontario Regulation 676 Uninsured Automobile Coverage, Ontario Regulation 7/00 Unfair or Deceptive Acts or Practices, and Ontario Regulation 777/93, a record, document or notice that is required to be delivered or furnished by these sections to a person, in a prescribed approved form or personally, by mail or by registered mail is deemed to have been provided by registered mail if provided to the person in electronic form in accordance with the *Electronic Commerce Act*.

33(1.2) A period of time that, under this Act, starts to run when that record, or notification of it, is delivered to the addressee's postal address starts to run when the record is deemed received in accordance with the *Electronic Commerce Act*.

If deemed necessary for cancellation notices, the Ontario government could amend the *Insurance Act* to include disclosure requirements like those in Georgia, or proof of delivery requirements similar to those in California. A specific addition could be made to the proposed general electronic communications and transactions provisions described above.

Electronic Proof of Auto Insurance

The *Compulsory Automobile Insurance Act* authorizes the FSCO to define the form of the proof of auto insurance card through a Superintendent of Insurance's bulletin. FSCO currently requires insurers to print proof of auto insurance cards and mail them to their customers.

ENVIRONMENTAL COSTS

IBC estimates that **31 million** pieces of paper are used every year on proof of insurance and policy renewal documents alone.



CONSUMER CONVENIENCE

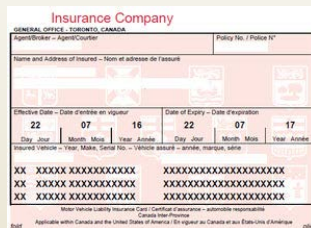
In Ontario, failure to show proof of auto insurance is not only inconvenient, **it could also result in a fine and impact a driver's insurance rates.**



FSCO has the authority to allow insurers to offer an electronic option for displaying proof of auto insurance. However, Ontario's Privacy Commissioner advises that without additional privacy protections, an individual who gives his or her electronic device to a law enforcement officer to show proof of auto insurance could be vulnerable to that officer searching other content on the device.

Almost every U.S. jurisdiction allows consumers to receive proof of auto insurance electronically. Several of them prescribe additional privacy protections in their insurance legislation that expressly outline the scope of law enforcement's authority when checking proof of auto insurance on an electronic device. Nova Scotia has become the first province to give consumers the option to receive their proof of insurance electronically.

According to the Centre for Study of Insurance Operations, nearly **half of Canadian consumers have expressed an interest** in receiving their proof of auto insurance electronically.



There are **46 U.S. states, plus Washington D.C.**, that permit drivers to present their proof of auto insurance cards to police officers **on their smartphones.**



PROOF OF AUTO INSURANCE IN U.S. JURISDICTIONS

Below are examples of how U.S. jurisdictions have addressed privacy concerns relating to law enforcement officers examining proof of auto insurance on a mobile electronic device.

The New Jersey legislation states the following:

The use of a cellular telephone, tablet, computer, or any other electronic device to display proof of insurance does not constitute consent for a police officer or judge to access any other content on the device.

The Texas legislation states the following:

The display of an image that includes financial responsibility information on a wireless communication device... does not constitute effective consent for a law enforcement officer, or any other person, to access the contents of the wireless communication device except to view the financial responsibility information.

The Rhode Island legislation states the following:

Proof of financial responsibility may be provided using a mobile electronic device; provided, however, that the police officer requiring the proof of financial responsibility shall be prohibited from viewing any other content on the mobile electronic device.

RECOMMENDATION:

IBC recommends that, as in Nova Scotia, FSCO issue a bulletin that permits insurers to offer an electronic option for proof of auto insurance.

Given the privacy concerns, if the government deems it necessary, IBC also recommends a provision be added to the *Compulsory Automobile Insurance Act* to prohibit law enforcement officers from viewing, accessing or using any other content on the electronic device.

Specifically, the provision could be as follows:

3(1.1) For the purposes of Section 3(1) proof of financial responsibility may be provided using a mobile electronic device provided, however, that absent reasonable and probable cause incidental to another investigation, a law enforcement officer requiring the proof of financial responsibility shall be prohibited from viewing, accessing or using any other content on the mobile electronic device.

Electronic Prescribed Insurance Forms

For many transactions, the *Insurance Act* and corresponding regulations require insurers to use certain FSCO-approved forms. Insurers are prohibited from deviating from these prescribed forms, unless the deviations in the document do not affect the substance of the form. This requirement prevents insurers from adapting certain forms, such as the auto insurance policy, and some claims forms, to an online environment.

RECOMMENDATION:

IBC recommends that FSCO amend the prescribed insurance forms to include the necessary data collection and consent provision disclosure statements that would allow consumers to make an informed decision on whether to enter into contracts and deliver and/or receive information electronically. This approach should include the use of e-signatures, which are already the legal equivalent to pen and paper in real estate transactions due to recent amendments to the *Electronic Commerce Act*.