

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 716

Introduced by Gloor, 35.

Read first time January 08, 2014

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to insurance; to provide procedures for
2 electronic delivery of notices and documents and Internet
3 posting of property and casualty insurance policies.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section:

2 (a) Delivered by electronic means includes:

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

5 (ii) Posting on an electronic network or site accessible
6 via the Internet, mobile application, computer, mobile device,
7 tablet, or any other electronic device, together with separate notice
8 of the posting which shall be provided by electronic mail to the
9 address at which the party has consented to receive notice or by any
10 other delivery method that has been consented to by the party; and

11 (b) Party means any recipient of any notice or document
12 required as part of an insurance transaction, including, but not
13 limited to, an applicant, an insured, a policyholder, or an annuity
14 contract holder.

15 (2) Subject to subsection (4) of this section, any notice
16 to a party or any other document required under applicable law in an
17 insurance transaction or that is to serve as evidence of insurance
18 coverage may be delivered, stored, and presented by electronic means
19 so long as it meets the requirements of the Uniform Electronic
20 Transactions Act.

21 (3) Delivery of a notice or document in accordance with
22 this section shall be considered equivalent to any delivery method
23 required under applicable law, including delivery by first-class
24 mail, certified mail, certificate of mail, or certificate of mailing.

25 (4) A notice or document may be delivered by electronic

1 means by an insurer to a party under this section if:

2 (a) The party has affirmatively consented to that method
3 of delivery and has not withdrawn the consent;

4 (b) The party, before giving consent, is provided with a
5 clear and conspicuous statement informing the party of:

6 (i) Any right or option of the party to have the notice
7 or document provided or made available in paper or another non-
8 electronic form;

9 (ii) The right of the party to withdraw consent to have a
10 notice or document delivered by electronic means and any fees,
11 conditions, or consequences imposed in the event consent is
12 withdrawn;

13 (iii) Whether the party's consent applies:

14 (A) Only to the particular transaction as to which the
15 notice or document must be given; or

16 (B) To identified categories of notices or documents that
17 may be delivered by electronic means during the course of the
18 parties' relationship;

19 (iv) The means, after consent is given, by which a party
20 may obtain a paper copy of a notice or document delivered by
21 electronic means and the fee, if any, for the paper copy; and

22 (v) The procedure a party must follow to withdraw consent
23 to have a notice or document delivered by electronic means and to
24 update information needed to contact the party electronically;

25 (c) The party:

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

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

9 (d) After consent of the party is given, the insurer, in
10 the event a change in the hardware or software requirements needed to
11 access or retain a notice or document delivered by electronic means
12 creates a material risk that the party will not be able to access or
13 retain a subsequent notice or document to which the consent applies:

14 (i) Provides the party with a statement of:

15 (A) The revised hardware and software requirements for
16 access to and retention of a notice or document delivered by
17 electronic means; and

18 (B) The right of the party to withdraw consent without
19 the imposition of any fee, condition, or consequence that was not
20 disclosed under subdivision (4)(b)(ii) of this section; and

21 (ii) Complies with subdivision (4)(b) of this section.

22 (5) This section does not affect requirements related to
23 content or timing of any notice or document required under applicable
24 law.

25 (6) If a provision of Chapter 44 or applicable law

1 requiring a notice or document to be provided to a party expressly
2 requires verification or acknowledgment of receipt of the notice or
3 document, the notice or document may be delivered by electronic means
4 only if the method used provides for verification or acknowledgment
5 of receipt.

6 (7) The legal effectiveness, validity, or enforceability
7 of any contract or policy of insurance executed by a party may not be
8 denied solely because of the failure to obtain electronic consent or
9 confirmation of consent of the party in accordance with subdivision
10 (4)(c)(ii) of this section.

11 (8) A withdrawal of consent by a party does not affect
12 the legal effectiveness, validity, or enforceability of a notice or
13 document delivered by electronic means to the party before the
14 withdrawal of consent is effective. A withdrawal of consent by a
15 party is effective within a reasonable period of time after receipt
16 of the withdrawal by the insurer. Failure by an insurer to comply
17 with subdivision (4)(d) of this section may be treated, at the
18 election of the party, as a withdrawal of consent for purposes of
19 this section.

20 (9) This section does not apply to a notice or document
21 delivered by an insurer in an electronic form before the effective
22 date of this act to a party who, before that date, has consented to
23 receive notice or document in an electronic form otherwise allowed by
24 law.

25 (10) If the consent of a party to receive certain notices

1 or documents in an electronic form is on file with an insurer before
2 the effective date of this act, and pursuant to this section an
3 insurer intends to deliver additional notices or documents to such
4 party in an electronic form, then prior to delivering such additional
5 notices or documents electronically, the insurer shall notify the
6 party of:

7 (a) The notices or documents that may be delivered by
8 electronic means under this section that were not previously
9 delivered electronically; and

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

12 (11) Except as otherwise provided by law, if an oral
13 communication or a recording of an oral communication from a party
14 can be reliably stored and reproduced by an insurer, the oral
15 communication or recording may qualify as a notice or document
16 delivered by electronic means for purposes of this section. If a
17 provision of Chapter 44 or applicable law requires a signature or a
18 notice or document to be notarized, acknowledged, verified, or made
19 under oath, the requirement is satisfied if the electronic signature
20 of the person authorized to perform those acts, together with all
21 other information required to be included by the provision, is
22 attached to or logically associated with the signature, notice, or
23 document.

24 (12) This section shall not be construed to modify,
25 limit, or supersede the federal Electronic Signatures in Global and

1 National Commerce Act.

2 Sec. 2. Notwithstanding the provisions of section 1 of
3 this act, standard property and casualty insurance policies and
4 endorsements that do not contain personally identifiable information
5 may be mailed, delivered, or posted on the insurer's web site. If the
6 insurer elects to post insurance policies and endorsements on its web
7 site in lieu of mailing or delivering them to the insured, the
8 insurer must comply with all of the following conditions:

9 (1) The policy and endorsements must be accessible and
10 remain that way for as long as the policy is in force;

11 (2) After the expiration of the policy, the insurer must
12 archive its expired policies and endorsements for a period of five
13 years and make them available upon request;

14 (3) The policies and endorsements must be posted in a
15 manner that enables the insured to print and save the policy and
16 endorsements using programs or applications that are widely available
17 on the Internet and free to use;

18 (4) The insurer must provide the following information
19 in, or simultaneous with, each declarations page provided at the time
20 of issuance of the initial policy and any renewals of that policy:

21 (a) A description of the exact policy and endorsement
22 forms purchased by the insured;

23 (b) A method by which the insured may obtain, upon
24 request and without charge, a paper copy of the policy; and

25 (c) The Internet address where the policy and

1 endorsements are posted; and

2 (5) The insurer must provide notice, in the manner in
3 which the insurer customarily communicates with the insured, of any
4 changes to the forms or endorsements, the insured's right to obtain,
5 upon request and without charge, a paper copy of such forms or
6 endorsements, and the Internet address where such forms or
7 endorsements are posted.