

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 116

Introduced by Kolterman, 24.

Read first time January 10, 2019

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to insurance; to authorize electronic delivery
2 of insurance policies and billing information to insureds as
3 prescribed.

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 party has
4 consented to receive notices or documents; or

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

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

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

19 (3) Delivery of a notice or document in accordance with this section
20 shall be considered equivalent to any delivery method required under
21 applicable law, including delivery by first-class mail, registered mail,
22 certified mail, or a commercial mail delivery service. A certificate of
23 mailing shall be filed with the court. In any instance in which proof of
24 receipt is required for a mailing, the electronic delivery method used
25 must provide for verification or acknowledgment of receipt.

26 (4) A notice or document may be delivered by electronic means by an
27 insurer to a party under this section if:

28 (a) The party has affirmatively consented to such method of delivery
29 and has not withdrawn the consent;

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

1 (i) The right of the party to withdraw consent to have a notice or
2 document delivered by electronic means at any time;

3 (ii) Any conditions or consequences imposed in the event consent is
4 withdrawn;

5 (iii) The transactions and types of notices and documents to which
6 the party's consent would apply;

7 (iv) The right of a party to have a notice or document delivered in
8 paper form by mail and the means, after consent is given, by which a
9 party may obtain a paper copy of a notice or document delivered by
10 electronic means; and

11 (v) The procedure a party must follow to withdraw consent to have a
12 notice or document delivered by electronic means and to update the
13 party's electronic mail address;

14 (c) The party:

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

18 (ii) Consents electronically, or confirms consent electronically, in
19 a manner that reasonably demonstrates that the party can access
20 information in the electronic form that will be used for notices or
21 documents delivered by electronic means as to which the party has given
22 consent; and

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

28 (i) Provides the party with a statement that describes:

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

31 (B) The right of the party to withdraw consent without the

1 imposition of any condition or consequence that was not disclosed at the
2 time of initial consent; and

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

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

6 (6) If any provision of Chapter 44 or any other applicable law
7 requiring a notice or document to be provided to a party expressly
8 requires verification or acknowledgment of receipt of the notice or
9 document, the notice or document may be delivered by electronic means
10 only if the method used provides for verification or acknowledgment of
11 receipt.

12 (7) If verification or acknowledgment of receipt is not obtained,
13 the notice or document shall be sent to the party by mail as prescribed
14 by Chapter 44. If two or more electronic communications to the party are
15 returned as undeliverable during a thirty-day period, all future
16 communications shall be sent to the party by first-class or other mail as
17 prescribed by law unless and until the party consents electronically, or
18 confirms electronically, in a manner that reasonably demonstrates that
19 the party can access information in the electronic form that will be used
20 for notices or documents delivered by electronic means as to which the
21 party has given consent.

22 (8) A withdrawal of consent by a party does not affect the legal
23 effectiveness, validity, or enforceability of a notice or document
24 delivered by electronic means to the party before the withdrawal of
25 consent is effective. A withdrawal of consent by a party is effective
26 within a reasonable period of time after receipt of the withdrawal by the
27 insurer. Failure by an insurer to comply with subdivision (4)(d) of this
28 section may be treated, at the election of the party, as a withdrawal of
29 consent for purposes of this section.

30 (9) This section does not apply to a notice or document delivered by
31 an insurer in an electronic form before the effective date of this act to

1 a party who, before such date, has consented to receive notices or
2 documents in an electronic form otherwise allowed by law.

3 (10) If the consent of a party to receive certain notices or
4 documents in an electronic form is on file with an insurer before the
5 effective date of this act, and pursuant to this section an insurer
6 intends to deliver additional notices or documents to such party in an
7 electronic form, then prior to delivering such additional notices or
8 documents electronically, the insurer shall provide the party with a
9 statement that describes:

10 (a) The notices or documents that will be delivered by electronic
11 means under this section that were not previously delivered
12 electronically; and

13 (b) The party's right to withdraw consent to have notices or
14 documents delivered by electronic means without the imposition of any
15 condition or consequence that was not disclosed at the time of initial
16 consent.

17 (11) An insurer shall deliver a notice or document by any other
18 delivery method permitted by law other than electronic means if:

19 (a) The insurer attempts to deliver the notice or document by
20 electronic means and has a reasonable basis for believing that the notice
21 or document has not been received by the party; or

22 (b) The insurer becomes aware that the electronic mail address
23 provided by the party is no longer valid.

24 (12) An insurer shall not be subject to civil liability for any harm
25 or injury that occurs as a result of a party's election to receive any
26 notice or document by electronic means or by the insurer's failure to
27 deliver a notice or document by electronic means.

28 (13) This section shall not be construed to modify, limit, or
29 supersede the federal Electronic Signatures in Global and National
30 Commerce Act, 15 U.S.C. 7001 et seq., as such act existed on the
31 effective date of this act.

1 (14) This section shall apply only to property and casualty
2 insurance policies.

3 Sec. 2. Notwithstanding the provisions of section 1 of this act,
4 property and casualty insurance policies and endorsements that do not
5 contain personally identifiable financial information as defined in
6 section 44-903 may be mailed, delivered, or posted on the insurer's web
7 site. If the insurer elects to post insurance policies and endorsements
8 on its web site in lieu of mailing or delivering them to the insured, the
9 insurer must comply with all of the following conditions:

10 (1) The policy and endorsements must be accessible to the insured
11 and insurer of record and remain that way for as long as the policy is in
12 force;

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

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

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

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

25 (b) A description of the insured's right to receive, upon request
26 and without charge, a paper copy of the policy and endorsements by mail;
27 and

28 (c) The Internet address where the policy and endorsements are
29 posted;

30 (5) The insurer, upon request and without charge, must mail a paper
31 copy of the policy and endorsements to the insured; and

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