

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1311

Introduced by

Representatives Keiser, Klemin

Senators Campbell, Klein

1 A BILL for an Act to create and enact a new section to chapter 26.1-02 of the North Dakota
2 Century Code, relating to electronic delivery of insurance notices and documents.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 26.1-02 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Electronic notices and documents.**

7 1. As used in this section:

8 a. "Delivered by electronic means" includes:

9 (1) Delivery to an electronic mail address at which a party has consented to
10 receive notices or documents; or

11 (2) Posting on an electronic network or site accessible via the internet, mobile
12 application, computer, mobile device, tablet, or any other electronic device,
13 together with separate notice to a party directed to the electronic mail
14 address at which the party has consented to receive notice of the posting.

15 b. "Party" means any recipient of any notice or document required as part of an
16 insurance transaction, including an applicant, an insured or a policyholder.

17 2. Subject to the requirements of this section, any notice to a party or any other
18 document required under applicable law in an insurance transaction or any other
19 document that is to serve as evidence of insurance coverage may be delivered,
20 stored, and presented by electronic means if it meets the requirements of chapter
21 9-16. Electronic means may not be the sole method of providing a notice of
22 cancellation, nonrenewal, or change in rates or benefits.

- 1 3. Delivery of a notice or document in accordance with this section is equivalent to any
2 delivery method required under applicable law, including delivery by first class mail;
3 first class mail, postage prepaid; or registered mail.
- 4 4. A notice or document may be delivered by electronic means by an insurer to a party
5 under this section if all of the following are met:
- 6 a. The party has affirmatively consented to that method of delivery and has not
7 withdrawn the consent.
- 8 b. The party, before giving consent, is provided with a clear and conspicuous
9 statement informing the party of each of the following:
- 10 (1) The right of the party at any time to withdraw consent to have a notice or
11 document delivered by electronic means and any conditions or
12 consequences imposed in the event consent is withdrawn.
- 13 (2) The types of notices and documents to which the party's consent would
14 apply. The right of a party to have a notice or document delivered in paper
15 form.
- 16 (3) The means, after consent is given, by which a party may obtain a paper
17 copy of a notice or document delivered by electronic means.
- 18 (4) The procedure a party shall follow to withdraw consent to have a notice or
19 document delivered by electronic means and to update the party's electronic
20 mail address.
- 21 c. The party:
- 22 (1) Before giving consent, is provided with a statement of the hardware and
23 software requirements for access to and retention of a notice or document
24 delivered by electronic means; and
- 25 (2) Consents electronically, or confirms consent electronically, in a manner that
26 demonstrates the party can access information in the electronic form that
27 will be used for notices or documents delivered by electronic means as to
28 which the party has given consent.
- 29 d. The insurer takes measures reasonably calculated to ensure the delivery by
30 electronic means results in the party's receipt of the notice or document.

e. After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies:

(1) Provides the party with a statement of:

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

(b) The right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

(2) Complies with subdivision b.

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

6. If a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

7. The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with paragraph 2 of subdivision c of subsection 4.

8. a. A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

b. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer.

c. Failure by an insurer to comply with subdivision d of subsection 4 may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

- 1 9. This section does not apply to a notice or document delivered by an insurer in an
2 electronic form before August 1, 2015, to a party that, before that date, has consented
3 to receive notices or documents in an electronic form otherwise allowed by law.
- 4 10. If the consent of a party to receive certain notices or documents in an electronic form
5 is on file with an insurer before August 1, 2015, and pursuant to this section, an insurer
6 intends to deliver additional notices or documents to such party in an electronic form,
7 then before delivering such additional notices or documents electronically, the insurer
8 shall provide the insured with a statement that describes:
- 9 a. The notices or documents that must be delivered by electronic means under this
10 section which were not previously delivered electronically; and
- 11 b. The party's right to withdraw consent to have notices or documents delivered by
12 electronic means.
- 13 11. Except as otherwise provided by law, if an oral communication or a recording of an
14 oral communication from a party can be reliably stored and reproduced by an insurer,
15 the oral communication or recording may qualify as a notice or document delivered by
16 electronic means for purposes of this section.
- 17 b. If a provision of this title or applicable law requires a signature, notice, or
18 document to be notarized, acknowledged, verified, or made under oath, the
19 requirement is satisfied if the electronic signature of the individual authorized to
20 perform those acts, together with all other information required to be included by
21 the provision, is attached to or logically associated with the signature, notice, or
22 document.
- 23 12. This section may not be construed to modify, limit, or supersede the provisions of the
24 federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229;
25 114 Stat. 464; 15 U.S.C. ch. 96].