

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED 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 26.1-39 of the North Dakota  
2 Century Code, relating to electronic delivery of property and casualty insurance notices and  
3 documents.

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

5 **SECTION 1.** A new section to chapter 26.1-39 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Electronic notices and documents.**

8 1. As used in this section:

9 a. "Delivered by electronic means" includes:

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

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

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

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

- 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7       withdrawn the consent.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 means, after consent is given, by which a party may obtain a paper  
14       copy of a notice or document delivered by electronic means.
- 15       (3) The procedure a party shall follow to withdraw consent to have a notice or  
16       document delivered by electronic means and to update the party's electronic  
17       mail address.
- 18       c. The party:
- 19       (1) Before giving consent, is provided with a statement of the hardware and  
20       software requirements for access to and retention of a notice or document  
21       delivered by electronic means; and
- 22       (2) Consents electronically, or confirms consent electronically, in a manner that  
23       demonstrates the party can access information in the electronic form that  
24       will be used for notices or documents delivered by electronic means as to  
25       which the party has given consent.
- 26       d. After consent of the party is given, the insurer, in the event a change in the  
27       hardware or software requirements needed to access or retain a notice or  
28       document delivered by electronic means creates a material risk that the party will  
29       not be able to access or retain a subsequent notice or document to which the  
30       consent applies, provides the party with a statement of the revised hardware and

1                   software requirements for access to and retention of a notice or document  
2                   delivered by electronic means and complies with subdivision b.

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

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

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

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

16      b.   A withdrawal of consent by a party is effective within a reasonable period of time  
17      not to exceed five days after receipt of the withdrawal by the insurer.

18      9.   This section does not apply to a notice or document delivered by an insurer in an  
19      electronic form before August 1, 2015, to a party that, before that date, has consented  
20      to receive notices or documents in an electronic form otherwise allowed by law.

21      10. If the consent of a party to receive certain notices or documents in an electronic form  
22      is on file with an insurer before August 1, 2015, and pursuant to this section, an insurer  
23      intends to deliver additional notices or documents to such party in an electronic form,  
24      then before delivering such additional notices or documents electronically, the insurer  
25      shall provide the insured with a statement that describes:

26      a.   The notices or documents that must be delivered by electronic means under this  
27      section which were not previously delivered electronically; and

28      b.   The party's right to withdraw consent to have notices or documents delivered by  
29      electronic means.

30      11. a.   Except as otherwise provided by law, if an oral communication or a recording of  
31      an oral communication from a party can be reliably stored and reproduced by an

1                    insurer, the oral communication or recording may qualify as a notice or document  
2                    delivered by electronic means for purposes of this section.

3                    b. If a provision of this title or applicable law requires a signature, notice, or  
4                    document to be notarized, acknowledged, verified, or made under oath, the  
5                    requirement is satisfied if the electronic signature of the individual authorized to  
6                    perform those acts, together with all other information required to be included by  
7                    the provision, is attached to or logically associated with the signature, notice, or  
8                    document.

9                    12. This section may not be construed to modify, limit, or supersede the provisions of the  
10                    federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229;  
11                    114 Stat. 464; 15 U.S.C. ch. 96].