

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1137

Introduced by

Representatives Keiser, Bosch, O'Brien

Senator Burckhard

1 A BILL for an Act to create and enact two new sections to chapter 26.1-02 of the North Dakota
2 Century Code, relating to electronic delivery of insurance notices and documents; and to repeal
3 section 26.1-39-26 of the North Dakota Century Code, relating to electronic delivery of property
4 and casualty insurance notices and documents.

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

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

8 **Electronic notices and documents.**

9 1. As used in this section:

10 a. "Delivered by electronic means" includes:

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

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

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

19 2. Subject to the requirements of this section, any notice to a party or any other
20 document required under applicable law in an insurance transaction or any other
21 document that is to serve as evidence of insurance coverage may be delivered,
22 stored, and presented by electronic means if the notice or document meets the
23 requirements of chapter 9-16.

- 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 the following requirements are met:
- 6 a. The party has affirmatively consented to the electronic method of delivery and
7 has not withdrawn the consent.
- 8 b. The party, before giving consent, is provided with a clear and conspicuous
9 statement informing the party 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 if 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 the party has given consent, if a change in the hardware or software
27 requirements needed to access or retain a notice or document delivered by
28 electronic means creates a material risk that the party will not be able to access
29 or retain a subsequent notice or document to which the consent applies, the
30 insurer shall provide the party with a statement of the revised hardware and
31 software requirements which complies with subdivision b.

- 1 e. The insurer has provided a copy of the notice or document to the party's
2 insurance producer by electronic means or regular mail.
- 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 electronic method used provides for verification or acknowledgment of
9 receipt.
- 10 7. The legal effectiveness, validity, or enforceability of any insurance contract or policy
11 executed by a party may not be denied solely because of the failure to obtain
12 electronic consent or confirmation of consent of the party in accordance with
13 paragraph 2 of subdivision c of subsection 4.
- 14 8. A withdrawal of consent by a party does not affect the legal effectiveness, validity, or
15 enforceability of a notice or document delivered by electronic means to the party
16 before the withdrawal of consent is effective.
- 17 9. A withdrawal of consent by a party is effective within a reasonable time, not to exceed
18 five days, after receipt of the withdrawal by the insurer.
- 19 10. This section does not apply to a notice or document delivered before August 1, 2019,
20 by an insurer in an electronic form to a party that, before that date, has consented to
21 receive notices or documents in an electronic form otherwise allowed by law.
- 22 11. If the consent of a party to receive certain notices or documents in an electronic form
23 is on file with an insurer before August 1, 2019, and pursuant to this section, an insurer
24 intends to deliver additional notices or documents to the party in an electronic form,
25 then before delivering those additional notices or documents electronically, the insurer
26 shall provide the insured with a statement describing:
- 27 a. The notices or documents that must be delivered by electronic means under this
28 section which were not previously delivered electronically; and
- 29 b. The party's right to withdraw consent to have notices or documents delivered by
30 electronic means.

1 12. Except as otherwise provided by law, if an oral communication or a recording of an
2 oral communication from a party can be reliably stored and reproduced by an insurer,
3 the oral communication or recording may qualify as a notice or document delivered by
4 electronic means for purposes of this section.

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

10 14. This section may not be construed to modify, limit, or supersede the provisions of the
11 federal Electronic Signatures in Global and National Commerce Act
12 [15 U.S.C. ch. 7001 et seq.].

13 **SECTION 2.** A new section to chapter 26.1-02 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Posting policy on internet.**

16 1. An insurance policy and an endorsement that does not contain personally identifiable
17 information may be mailed, delivered, or posted on the insurer's website. If the insurer
18 elects to post an insurance policy and an endorsement on the insurer's website in lieu
19 of mailing or delivering the policy and endorsement to the insured, the insurer shall
20 comply with the following conditions:

21 a. The policy and an endorsement must be accessible to the insured and producer
22 of record and remain that way while the policy is in force;

23 b. After the expiration of the policy, the insurer shall archive the expired policy and
24 endorsement for a period of five years or other period required by law, and make
25 the policy and endorsement available upon request;

26 c. The policy and endorsement must be posted in a manner that enables the
27 insured and producer of record to print and save the policy and endorsement
28 using a program or application that is widely available on the internet and free to
29 use;

- 1 d. The insurer shall provide the following information in, or simultaneous with, each
2 declaration page provided at the time of issuance of the initial policy and any
3 renewals of the policy:
- 4 (1) A description of the exact policy and endorsement form purchased by the
5 insured;
- 6 (2) A description of the insured's right to receive, upon request and without
7 charge, a paper copy of the policy and endorsement by mail; and
- 8 (3) The internet address at which the policy and endorsement are posted;
- 9 e. The insurer, upon an insured's request and without charge, shall mail a paper
10 copy of the policy and endorsement to the insured; and
- 11 f. The insurer shall provide notice, in the format preferred by the insured, of any
12 change to the forms or endorsement; the insured's right to obtain, upon request
13 and without charge, a paper copy of the forms or endorsement; and the internet
14 address at which the forms or endorsement are posted.
- 15 2. This section does not affect the timing or content of any disclosure or document
16 required to be provided or made available to any insured under applicable law.

17 **SECTION 3. REPEAL.** Section 26.1-39-26 of the North Dakota Century Code is repealed.