

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1137
(Representatives Keiser, Bosch, O'Brien)
(Senator Burckhard)

AN ACT to create and enact two new sections to chapter 26.1-02 of the North Dakota Century Code, relating to electronic delivery of insurance notices and documents; and to repeal section 26.1-39-26 of the North Dakota Century Code, relating to electronic delivery of property and casualty insurance notices and documents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Electronic notices and documents.

1. As used in this section:
 - a. "Delivered by electronic means" includes:
 - (1) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
 - (2) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or other electronic device, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.
 - b. "Party" means a recipient of a notice or document required as part of an insurance transaction, including an applicant, insured, or policyholder.
2. Subject to the requirements of this section, any notice to a party or any other document required under applicable law in an insurance transaction or any other document that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if the notice or document meets the requirements of chapter 9-16.
3. Delivery of a notice or document in accordance with this section is equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; or registered mail.
4. A notice or document may be delivered by electronic means by an insurer to a party under this section if the following requirements are met:
 - a. The party has affirmatively consented to the electronic method of delivery and has not withdrawn the consent.
 - b. The party, before giving consent, is provided with a clear and conspicuous statement informing the party of the following:
 - (1) The right of the party at any time to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed if consent is withdrawn.
 - (2) The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means.

- (3) The procedure a party shall follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address.
- c. The party:

 - (1) Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and
 - (2) Consents electronically, or confirms consent electronically, in a manner that demonstrates the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent.
- d. After the party has given consent, if 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, the insurer shall provide the party with a statement of the revised hardware and software requirements which complies with subdivision b.
- e. The insurer has provided a copy of the notice or document to the party's insurance producer by electronic means or regular mail.
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 electronic method used provides for verification or acknowledgment of receipt.
7. The legal effectiveness, validity, or enforceability of any insurance contract or policy 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 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.
9. A withdrawal of consent by a party is effective within a reasonable time, not to exceed five days, after receipt of the withdrawal by the insurer.
10. This section does not apply to a notice or document delivered before August 1, 2019, by an insurer in an electronic form to a party that, before that date, has consented to receive notices or documents in an electronic form otherwise allowed by law.
11. If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before August 1, 2019, and pursuant to this section, an insurer intends to deliver additional notices or documents to the party in an electronic form, then before delivering those additional notices or documents electronically, the insurer shall provide the insured with a statement describing:

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

- b. The party's right to withdraw consent to have notices or documents delivered by electronic means.
- 12. Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section.
- 13. If a provision of this title or applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the individual authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.
- 14. This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. ch. 7001 et seq.].

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

Posting policy on internet.

- 1. An insurance policy and an endorsement that does not contain personally identifiable information may be mailed, delivered, or posted on the insurer's website. If the insurer elects to post an insurance policy and an endorsement on the insurer's website in lieu of mailing or delivering the policy and endorsement to the insured, the insurer shall comply with the following conditions:
 - a. The policy and an endorsement must be accessible to the insured and producer of record and remain that way while the policy is in force;
 - b. After the expiration of the policy, the insurer shall archive the expired policy and endorsement for a period of five years or other period required by law, and make the policy and endorsement available upon request;
 - c. The policy and endorsement must be posted in a manner that enables the insured and producer of record to print and save the policy and endorsement using a program or application that is widely available on the internet and free to use;
 - d. The insurer shall provide the following information in, or simultaneous with, each declaration page provided at the time of issuance of the initial policy and any renewals of the policy:
 - (1) A description of the exact policy and endorsement form purchased by the insured;
 - (2) A description of the insured's right to receive, upon request and without charge, a paper copy of the policy and endorsement by mail; and
 - (3) The internet address at which the policy and endorsement are posted;
 - e. The insurer, upon an insured's request and without charge, shall mail a paper copy of the policy and endorsement to the insured; and
 - f. The insurer shall provide notice, in the format preferred by the insured, of any change to the forms or endorsement; the insured's right to obtain, upon request and without charge, a paper copy of the forms or endorsement; and the internet address at which the forms or endorsement are posted.

2. This section does not affect the timing or content of any disclosure or document required to be provided or made available to any insured under applicable law.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1137.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State