

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

526V0109

HOUSE BILL NO. 1156

Introduced by: Representatives Hawley, Anderson, Ecklund, Hawks, Heinert, Hickey, Johns, Kopp, Langer, Lust, Olson (Betty), Parsley, Peterson, Rounds, Sly, Steele, and Verchio and Senators Brown, Begalka, Heineman (Phyllis), Kirkeby, Maher, Tieszen, and White

1 FOR AN ACT ENTITLED, An Act to allow the transmission of electronic documents related
2 to insurance policies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

7 (1) "Delivered by electronic means,":

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

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

14 (2) "Party," any recipient of any notice or document required as part of an insurance



1 transaction, including an applicant, an insured, a policyholder, or an annuity contract
2 holder.

3 Section 2. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Subject to section 4 of this Act, any notice to a party or any other document required under
6 applicable law in an insurance transaction or that is to serve as evidence of insurance coverage
7 may be delivered, stored, and presented by electronic means if it meets the requirements of
8 chapter 53-10.

9 Section 3. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Delivery of a notice or document in accordance with the provisions of this Act is equivalent
12 to any delivery method required under applicable law.

13 Section 4. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 An insurer may only deliver a notice or document to a party by electronic means pursuant
16 to this Act if:

17 (1) The party affirmatively consents to the electronic delivery and has not withdrawn the
18 consent;

19 (2) The insurer provides the party with a clear and conspicuous statement, prior to
20 obtaining the party's consent, informing the party of:

21 (a) Any right or option of the party to have the notice or document provided or
22 made available in paper or another nonelectronic form;

23 (b) The right of the party to withdraw consent to have a notice or document
24 delivered by electronic means and any fees, conditions, or consequences that

- 1 may be imposed in the event consent is withdrawn;
- 2 (c) Whether the party's consent applies:
- 3 (i) Only to the particular transaction as to which the notice or document
- 4 must be given; or
- 5 (ii) To an identified category of notices or documents that may be delivered
- 6 by electronic means during the course of the parties' relationship;
- 7 (d) (i) The means by which a party may obtain a paper copy of a notice or
- 8 document delivered by electronic means, after the party consents to
- 9 electronic delivery; and
- 10 (ii) The fee, if any, for the paper copy; and
- 11 (e) The procedure a party must follow to withdraw consent to have a notice or
- 12 document delivered by electronic means and to update information needed to
- 13 contact the party electronically;
- 14 (3) The insurer ensures that the party:
- 15 (a) Is provided with a statement of the hardware and software requirements for
- 16 access to and retention of a notice or document delivered by electronic means
- 17 before the party consents to electronic delivery; and
- 18 (b) Consents electronically, or confirms consent electronically, in a manner that
- 19 reasonably demonstrates the party can access information in the electronic
- 20 form that will be used for notices or documents delivered by electronic means;
- 21 and
- 22 (4) The insurer, in the event a change in the hardware or software requirements needed
- 23 to access or retain a notice or document delivered by electronic means creates a
- 24 material risk that the party will not be able to access or retain a subsequent notice or

1 document, provides the consenting party with a statement of:

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

4 (b) The right of the party to withdraw consent without the imposition of any fee,
5 condition, or consequence that was not disclosed under subdivision (2)(b) of
6 this section.

7 Section 5. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Nothing in this Act affects any requirement related to content or timing of any notice or
10 document otherwise required pursuant to applicable law.

11 Section 6. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
12 follows:

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

17 Section 7. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The legal effectiveness, validity, or enforceability of any contract or policy of insurance
20 executed by a party may not be denied solely because of the failure to obtain electronic consent
21 or confirmation of consent of the party in accordance with subdivision (3)(b) of section 4 of this
22 Act.

23 Section 8. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 A withdrawal of consent by a party does not affect the legal effectiveness, validity, or
2 enforceability of a notice or document delivered by electronic means to the party before the
3 withdrawal of consent is effective. A withdrawal of consent by a party is effective within a
4 reasonable period of time after receipt of the withdrawal by the insurer. If an insurer fails to
5 comply with section 4 of this Act, the party may treat the failure as a withdrawal of consent for
6 purposes of this Act.

7 Section 9. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The provisions of this Act do not apply to a notice or document delivered by an insurer in
10 an electronic form before the effective date of this Act to a party who, before that date,
11 consented to receive notice or document in an electronic form otherwise allowed by law.

12 Section 10. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If the consent of a party to receive certain notices or documents in an electronic form is on
15 file with an insurer before the effective date of this Act, and pursuant to this Act, an insurer
16 intends to deliver additional notices or documents to such party in an electronic form, then prior
17 to delivering such additional notices or documents electronically, the insurer shall notify the
18 party of:

- 19 (1) The notices or documents that may be delivered by electronic means pursuant to this
20 Act that were not previously delivered electronically; and
- 21 (2) The party's right to withdraw consent to have notices or documents delivered by
22 electronic means.

23 Section 11. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 Except as otherwise provided by law, if an oral communication or a recording of an oral
2 communication from a party is reliably stored and reproduced by an insurer, the oral
3 communication or recording qualifies as a notice or document delivered by electronic means for
4 purposes of this Act. If a provision of applicable law requires a signature, notice, or document
5 to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the
6 electronic signature of the person authorized to perform those acts, together with all other
7 information required to be included by the provision, is attached to or logically associated with
8 the signature, notice, or document.

9 Section 12. That chapter 32-35 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Notwithstanding any other provision of this Act, if a standard property and casualty
12 insurance policy or endorsement does not contain personally identifiable information, an insurer
13 may mail, deliver, or post the policy or endorsement on the insurer's website. If the insurer elects
14 to post an insurance policy or endorsement on the insurer's website in lieu of mailing or
15 delivering the document to the insured, the insurer must comply with the following conditions:

- 16 (1) The policy and endorsement must be accessible as long as the policy or endorsement
17 is in force;
- 18 (2) After the policy expires, the insurer must maintain and archive the policy and
19 endorsement for five years after the expiration of the policy and shall make the
20 documents available to the party on request;
- 21 (3) The insurer must post the policy and endorsement in a manner that allows the insured
22 to print and save the policy and endorsement using a program or application that is
23 widely available on the internet and free to use;
- 24 (4) The insurer provides the following information in, or simultaneous with each

1 declarations page provided at the time of issuance of the initial policy and any
2 renewals of that policy;

3 (a) A description of the exact policy and endorsement form purchased by the
4 insured;

5 (b) A method by which the insured may obtain, upon request and without charge,
6 a paper copy of the policy; and

7 (c) The internet address where the insured's policy and endorsement is posted; and

8 (5) The insurer provides notice, in the format preferred by the insured, of any changes
9 to the form or endorsement, the insured's right to obtain, upon request and without
10 charge, a paper copy of a form, and the internet address where the form and
11 endorsement is posted.

12 Section 13. The provisions of this Act only apply to the insurance products and documents,
13 including insurance policies, insurance riders, insurance endorsements, and annuity contracts
14 filed with and regulated by the director pursuant to chapter 32-35.