

AN ACT

ENTITLED, An Act to allow the transmission of electronic documents related to insurance policies.

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

Section 1. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

- (1) "Delivered by electronic means,":
 - (a) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
 - (b) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice to a party directed to the electronic mail address at which the party consents to receive notice of the posting;
- (2) "Party," any recipient of any notice or document required as part of an insurance transaction, including an applicant, an insured, a policyholder, or an annuity contract holder.

Section 2. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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

Section 3. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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

Section 4. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

An insurer may only deliver a notice or document to a party by electronic means pursuant to this

Act if:

- (1) The party affirmatively consents to the electronic delivery and has not withdrawn the consent;
- (2) The insurer provides the party with a clear and conspicuous statement, prior to obtaining the party's consent, informing the party of:
 - (a) Any right or option of the party to have the notice or document provided or made available in paper or another nonelectronic form;
 - (b) The right of the party to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions, or consequences that may be imposed in the event consent is withdrawn;
 - (c) Whether the party's consent applies:
 - (i) Only to the particular transaction as to which the notice or document must be given; or
 - (ii) To an identified category of notices or documents that may be delivered by electronic means during the course of the parties' relationship;
 - (d) The means by which a party may obtain a paper copy of a notice or document delivered by electronic means, after the party consents to electronic delivery; and
 - (e) The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;
- (3) The insurer ensures that the party:
 - (a) 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 before the party consents to electronic delivery; and

- (b) Consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates the party can access information in the electronic form that will be used for notices or documents delivered by electronic means; and
- (4) 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, provides the consenting 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 fee, condition, or consequence that was not disclosed under subsection (2)(b) of this section.

Section 5. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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

Section 6. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

If a provision of 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 only be delivered by electronic means if the method used provides for verification or acknowledgment of receipt.

Section 7. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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 subsection (3)(b) of section 4 of this Act.

Section 8. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. If an insurer fails to comply with section 4 of this Act, the party may treat the failure as a withdrawal of consent for purposes of this Act.

Section 9. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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

Section 10. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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

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

Section 11. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

Except as otherwise provided by law, if an oral communication or a recording of an oral

communication from a party is reliably stored and reproduced by an insurer, the oral communication or recording qualifies as a notice or document delivered by electronic means for purposes of this Act. If a provision of 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 person 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.

Section 12. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

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

- (1) The policy and endorsement must be accessible as long as the policy or endorsement is in force;
- (2) After the policy expires, the insurer must maintain and archive the policy and endorsement for five years after the expiration of the policy and shall make the documents available to the party on request;
- (3) The insurer must post the policy and endorsement in a manner that allows the insured to print and save the policy and endorsement using a program or application that is widely available on the internet and free to use;
- (4) The insurer provides the following information in, or simultaneous with each declarations page provided at the time of issuance of the initial policy and any renewals of that policy;

- (a) A description of the exact policy and endorsement form purchased by the insured;
 - (b) A method by which the insured may obtain, upon request and without charge, a paper copy of the policy; and
 - (c) The internet address where the insured's policy and endorsement is posted; and
- (5) The insurer provides notice, in the format preferred by the insured, of any changes to the form or endorsement, the insured's right to obtain, upon request and without charge, a paper copy of a form, and the internet address where the form and endorsement is posted.

Section 13. That chapter 58-1 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act apply to the insurance products and documents, including insurance policies, insurance riders, insurance endorsements, and annuity contracts filed with and regulated by the director pursuant to title 58.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1156

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1156

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State