

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 116**

FINAL READING

Introduced by Kolterman, 24.

Read first time January 10, 2019

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to insurance; to authorize electronic delivery
- 2 of insurance policies and billing information to insureds as
- 3 prescribed.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) For purposes of this section:

2           (a) Delivered by electronic means includes:

3           (i) Delivery to an electronic mail address at which a party has  
4 consented to receive notices or documents; or

5           (ii) Posting on an electronic network or site accessible via the  
6 Internet, mobile application, computer, mobile device, tablet, or any  
7 other electronic device, together with separate notice of the posting  
8 which shall be provided by electronic mail to the address at which the  
9 party has consented to receive notices or documents or by any other  
10 delivery method that has been consented to by the party; and

11           (b) Party means any recipient of any notice or document required as  
12 part of a first-party insurance transaction, including, but not limited  
13 to, an applicant, an insured, or a policyholder.

14           (2) Subject to the requirements of this section, any notice to a  
15 party or any other document required under applicable law in an insurance  
16 transaction or that is to serve as evidence of insurance coverage may be  
17 delivered, stored, and presented by electronic means so long as it meets  
18 the requirements of the Uniform Electronic Transactions Act.

19           (3) Delivery of a notice or document in accordance with this section  
20 shall be considered equivalent to any delivery method required under  
21 applicable law, including delivery by first-class mail, registered mail,  
22 certified mail, certificate of mailing, or a commercial mail delivery  
23 service. In any instance in which proof of receipt is required for a  
24 mailing, the electronic delivery method used must provide for  
25 verification or acknowledgment of receipt.

26           (4) A notice or document may be delivered by electronic means by an  
27 insurer to a party under this section if:

28           (a) The party has affirmatively consented to such method of delivery  
29 and has not withdrawn the consent;

30           (b) The party, before giving consent, is provided with a clear and  
31 conspicuous statement informing the party of:

1       (i) The right of the party to withdraw consent to have a notice or  
2 document delivered by electronic means at any time;

3       (ii) Any conditions or consequences imposed in the event consent is  
4 withdrawn;

5       (iii) The transactions and types of notices and documents to which  
6 the party's consent would apply;

7       (iv) The right of a party to have a notice or document delivered in  
8 paper form by mail and the means, after consent is given, by which a  
9 party may obtain a paper copy of a notice or document delivered by  
10 electronic means; and

11       (v) The procedure a party must follow to withdraw consent to have a  
12 notice or document delivered by electronic means and to update the  
13 party's electronic mail address;

14       (c) The party:

15       (i) Before giving consent, is provided with a statement of the  
16 hardware and software requirements for access to and retention of a  
17 notice or document delivered by electronic means; and

18       (ii) Consents electronically, or confirms consent electronically, in  
19 a manner that reasonably demonstrates that the party can access  
20 information in the electronic form that will be used for notices or  
21 documents delivered by electronic means as to which the party has given  
22 consent; and

23       (d) After consent of the party is given, the insurer, in the event a  
24 change in the hardware or software requirements needed to access or  
25 retain a notice or document delivered by electronic means creates a  
26 material risk that the party will not be able to access or retain a  
27 subsequent notice or document to which the consent applies:

28       (i) Provides the party with a statement that describes:

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

31       (B) The right of the party to withdraw consent without the

1 imposition of any condition or consequence that was not disclosed at the  
2 time of initial consent; and

3 (ii) Complies with subdivision (4)(b) of this section.

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

6 (6) If any provision of Chapter 44 or any other applicable law  
7 requiring a notice or document to be provided to a party expressly  
8 requires verification or acknowledgment of receipt of the notice or  
9 document, the notice or document may be delivered by electronic means  
10 only if the method used provides for verification or acknowledgment of  
11 receipt.

12 (7) If verification or acknowledgment of receipt is not obtained,  
13 the notice or document shall be sent to the party by mail as prescribed  
14 by Chapter 44. If two or more electronic communications to the party are  
15 returned as undeliverable during a thirty-day period, all future  
16 communications shall be sent to the party by first-class or other mail as  
17 prescribed by law unless and until the party consents electronically, or  
18 confirms electronically, in a manner that reasonably demonstrates that  
19 the party can access information in the electronic form that will be used  
20 for notices or documents delivered by electronic means as to which the  
21 party has given consent.

22 (8) A withdrawal of consent by a party does not affect the legal  
23 effectiveness, validity, or enforceability of a notice or document  
24 delivered by electronic means to the party before the withdrawal of  
25 consent is effective. A withdrawal of consent by a party is effective  
26 within a reasonable period of time after receipt of the withdrawal by the  
27 insurer. Failure by an insurer to comply with subdivision (4)(d) of this  
28 section may be treated, at the election of the party, as a withdrawal of  
29 consent for purposes of this section.

30 (9) This section does not apply to a notice or document delivered by  
31 an insurer in an electronic form before the effective date of this act to

1 a party who, before such date, has consented to receive notices or  
2 documents in an electronic form otherwise allowed by law.

3 (10) If the consent of a party to receive certain notices or  
4 documents in an electronic form is on file with an insurer before the  
5 effective date of this act, and pursuant to this section an insurer  
6 intends to deliver additional notices or documents to such party in an  
7 electronic form, then prior to delivering such additional notices or  
8 documents electronically, the insurer shall provide the party with a  
9 statement that describes:

10 (a) The notices or documents that will be delivered by electronic  
11 means under this section that were not previously delivered  
12 electronically; and

13 (b) The party's right to withdraw consent to have notices or  
14 documents delivered by electronic means without the imposition of any  
15 condition or consequence that was not disclosed at the time of initial  
16 consent.

17 (11) An insurer shall deliver a notice or document by any other  
18 delivery method permitted by law other than electronic means if:

19 (a) The insurer attempts to deliver the notice or document by  
20 electronic means and has a reasonable basis for believing that the notice  
21 or document has not been received by the party; or

22 (b) The insurer becomes aware that the electronic mail address  
23 provided by the party is no longer valid.

24 (12) A producer shall not be subject to civil liability for any harm  
25 or injury that occurs as a result of a party's election to receive any  
26 notice or document by electronic means or by the insurer's failure to  
27 deliver a notice or document by electronic means.

28 (13) This section shall not be construed to modify, limit, or  
29 supersede the federal Electronic Signatures in Global and National  
30 Commerce Act, 15 U.S.C. 7001 et seq., as such act existed on the  
31 effective date of this act.

1       (14) This section shall apply only to life insurance policies,  
2 annuity contracts, and property and casualty insurance policies.

3       Sec. 2. Notwithstanding the provisions of section 1 of this act,  
4 life insurance policies, annuity contracts, and property and casualty  
5 insurance policies and endorsements that do not contain personally  
6 identifiable financial information as defined in section 44-903 may be  
7 mailed, delivered, or posted on the insurer's web site. If the insurer  
8 elects to post insurance policies and endorsements on its web site in  
9 lieu of mailing or delivering them to the insured, the insurer must  
10 comply with all of the following conditions:

11       (1) The policy and endorsements must be accessible to the insured  
12 and producer of record and remain that way for as long as the policy is  
13 in force;

14       (2) After the expiration of the policy, the insurer must archive its  
15 expired policies and endorsements for a period of five years and make  
16 them available upon request;

17       (3) The policies and endorsements must be posted in a manner that  
18 enables the insured and producer of record to print and save the policy  
19 and endorsements using programs or applications that are widely available  
20 on the Internet and free to use;

21       (4) The insurer must provide the following information in, or  
22 simultaneously with, each declarations page provided at the time of  
23 issuance of the initial policy and any renewals of such policy:

24       (a) A description of the exact policy and endorsement forms  
25 purchased by the insured;

26       (b) A description of the insured's right to receive, upon request  
27 and without charge, a paper copy of the policy and endorsements by mail;  
28 and

29       (c) The Internet address where the policy and endorsements are  
30 posted;

31       (5) The insurer, upon request and without charge, must mail a paper

1 copy of the policy and endorsements to the insured; and  
2 (6) The insurer must provide notice, in the manner in which the  
3 insurer customarily communicates with the insured, of any changes to the  
4 forms or endorsements, the insured's right to obtain, upon request and  
5 without charge, a paper copy of such forms or endorsements, and the  
6 Internet address where such forms or endorsements are posted.