

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 628

Introduced by Schilz, 47.

Read first time January 21, 2015

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to insurance; to provide procedures for
- 2 electronic delivery of notices and documents and Internet posting of
- 3 property and casualty insurance policies.
- 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 notice or by any other delivery method
10 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 an insurance transaction, including, but not limited to, an
13 applicant, an insured, or a policyholder.

14 (2) Subject to subsection (4) of this section, any notice to a party
15 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, certified mail,
22 certificate of mail, or certificate of mailing. In any instance in which
23 proof of receipt is required for a mailing, the electronic delivery
24 method used must provide for verification or acknowledgment of receipt.

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

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28 and has not withdrawn the consent;

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

31 (i) Any right or option of the party to have the notice or document

1 provided or made available in paper or another nonelectronic form;

2 (ii) The right of the party to withdraw consent to have a notice or
3 document delivered by electronic means and any fees, conditions, or
4 consequences imposed in the event consent is withdrawn;

5 (iii) Whether the party's consent applies:

6 (A) Only to the particular transaction as to which the notice or
7 document must be given; or

8 (B) To identified categories of notices or documents that may be
9 delivered by electronic means during the course of the parties'
10 relationship;

11 (iv) The means, after consent is given, by which a party may obtain
12 a paper copy of a notice or document delivered by electronic means and
13 the fee, if any, for the paper copy; and

14 (v) The procedure a party must follow to withdraw consent to have a
15 notice or document delivered by electronic means and to update
16 information needed to contact the party electronically;

17 (c) The party:

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

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

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

31 (i) Provides the party with a statement of:

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

3 (B) The right of the party to withdraw consent without the
4 imposition of any fee, condition, or consequence that was not disclosed
5 under subdivision (4)(b)(ii) of this section; and

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

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

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

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

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

1 (9) This section does not apply to a notice or document delivered by
2 an insurer in an electronic form before the effective date of this act to
3 a party who, before that date, has consented to receive notice or
4 document in an electronic form otherwise allowed by law.

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

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

14 (b) The party's right to withdraw consent to have notices or
15 documents delivered by electronic means.

16 (11) Except as otherwise provided by law, if an oral communication
17 or a recording of an oral communication from a party can be reliably
18 stored and reproduced by an insurer, the oral communication or recording
19 may qualify as a notice or document delivered by electronic means for
20 purposes of this section. If a provision of Chapter 44 or applicable law
21 requires a signature or a notice or document to be notarized,
22 acknowledged, verified, or made under oath, the requirement is satisfied
23 if the electronic signature of the person authorized to perform those
24 acts, together with all other information required to be included by the
25 provision, is attached to or logically associated with the signature,
26 notice, or document.

27 (12) This section shall not be construed to modify, limit, or
28 supersede the federal Electronic Signatures in Global and National
29 Commerce Act.

30 (13) This section shall apply only to property and casualty
31 insurance.

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

8 (1) The policy and endorsements must be accessible and remain that
9 way for as long as the policy is in force;

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

13 (3) The policies and endorsements must be posted in a manner that
14 enables the insured to print and save the policy and endorsements using
15 programs or applications that are widely available on the Internet and
16 free to use;

17 (4) The insurer must provide the following information in, or
18 simultaneous with, each declarations page provided at the time of
19 issuance of the initial policy and any renewals of that policy:

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

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

24 (c) The Internet address where the policy and endorsements are
25 posted; and

26 (5) The insurer must provide notice, in the manner in which the
27 insurer customarily communicates with the insured, of any changes to the
28 forms or endorsements, the insured's right to obtain, upon request and
29 without charge, a paper copy of such forms or endorsements, and the
30 Internet address where such forms or endorsements are posted.