

An Act

ENROLLED HOUSE
BILL NO. 3304

By: Bennett and Hefner of the
House

and

Coleman of the Senate

An Act relating to insurance; amending 36 O.S. 2021, Section 123, as amended by Section 1 of Enrolled House Bill No. 1505 of the 2nd Session of the 59th Oklahoma Legislature, which relates to delivery and storage of electronic documents; defining terms; modifying definition; permitting plan sponsor of a health benefit plan to take certain actions on behalf of certain covered persons; requiring certain actions by plan sponsor; requiring certain actions by the insurer for the health benefit plan; requiring insurer to apprise certain parties of significance of certain notice or documents; and providing an effective date.

SUBJECT: Insurance

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2021, Section 123, as amended by Section 1 of Enrolled House Bill No. 1505 of the 2nd Session of the 59th Oklahoma Legislature, is amended to read as follows:

Section 123. A. In this section, the following words shall have the following meanings:

1. "Delivered by electronic means" includes:

- 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 of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notice, or by any other delivery method that has been consented to by the party-;

2. "Health benefit plan" means a health benefit plan as defined pursuant to Section 6060.4 of this title;

3. "Party" means any recipient of any notice or document required as part of an insurance transaction, including but not limited to an applicant, an insured, a policyholder, a covered person, or an annuity contract holder-; and

4. "Plan sponsor" means a person, other than a regulated entity, who establishes, adopts, or maintains a health benefit plan that covers residents of this state, including a plan established, adopted, or maintained by an employer or jointly by an employer and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

B. 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 that is to serve as evidence of insurance coverage, may be delivered, stored and presented by electronic means, so long as it meets the requirements of the Uniform Electronic Transactions Act pursuant to Section 15-101, et seq. of Title 12A of the Oklahoma Statutes.

C. Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

D. A notice or document may be delivered by electronic means by an insurer to a party under this section if:

1. The party has affirmatively consented to that method of delivery and has not withdrawn the consent; or

2. The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

- a. the right of the party to withdraw consent to have a notice or document delivered by electronic means, at any time, and any conditions or consequences imposed in the event consent is withdrawn,
- b. the types of notices and documents to which the party's consent would apply,
- c. the right of a party to have a notice or document delivered in paper form, and
- d. the procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address;

3. The party:

- a. 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
- b. consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that 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;

4. The insurer takes measures reasonably calculated to ensure that delivery by electronic means results in receipt of the notice or document by the party; and

5. After consent of the party is given, 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 to which the consent applies:

- a. provides the party with a statement that describes:
 - (1) the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means, and
 - (2) the right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent, and
- b. complies with paragraph 2 of this subsection.

E. 1. The plan sponsor of a health benefit plan may, on behalf of covered persons enrolled in the plan, provide consent to the mailing of all communications related to the plan by electronic means otherwise required by paragraphs 1 and 2 of subsection D of this section.

2. Before consenting on behalf of a covered person, a plan sponsor must:

- a. confirm that the covered person routinely uses electronic communications during the normal course of employment and is able to access and retain electronic communications that may be delivered by the insurer, and
- b. inform the party in any manner the plan sponsor deems appropriate that such consent will be provided, and that notices and documents related to the plan may be delivered to the party's work electronic mail address unless the party affirmatively opts out of delivery by electronic means or provides an alternative electronic mail address.

3. Before providing delivery of a notice or document by electronic means pursuant to this subsection, the insurer for the health benefit plan must:

a. provide the party with a clear and conspicuous statement informing the person of all of the following:

(1) the types of notices and documents that may be delivered to the covered person by electronic means,

(2) the right of the party to withdraw consent to have a notice or document delivered by electronic means at any time without charge,

(3) the procedures the party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the person's electronic mail address, and

(4) the right of the party to have any notice or document delivered, upon request, in paper form free of charge,

b. provide the party opportunity to opt out of delivery by electronic means, and

c. document that the applicable provisions of the conditions under the Uniform Electronic Transactions Act, Section 15-101 et seq. of Title 12A of the Oklahoma Statutes, are satisfied.

4. When a notice or document is provided electronically to a party pursuant to this subsection, an insurer shall apprise the party of the significance of the notice or document when it is not otherwise reasonably evident and of the right to request and obtain a paper version of such notice or document.

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

~~F.~~ G. 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 method used provides for verification or acknowledgment of receipt.

~~G.~~ H. 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 subparagraph b of paragraph 3 of subsection D of this section.

~~H.~~ I. 1. 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.

2. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer.

3. Failure by an insurer to comply with paragraph 5 of subsection D and subsection J of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

~~I.~~ J. This section does not apply to a notice or document delivered by an insurer in an electronic form before ~~the effective date of this act~~ November 1, 2017, to a party who, before that date, has consented to receive notice or document in an electronic form otherwise allowed by law.

~~J.~~ K. 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~~ November 1, 2017, and pursuant to this section, 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:

1. Provide the party with a statement that describes:
 - a. the notices or documents that shall be delivered by electronic means under this section that were not previously delivered electronically, and
 - b. the party's right to withdraw consent to have notices or documents delivered by electronic means, without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

2. Comply with paragraph 2 of subsection D of this section.

~~K.~~ L. An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if:

1. The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party; or

2. The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

~~L.~~ M. Notwithstanding subsection A of this section or any other law or regulation of this state requiring an insurer to provide, send, or deliver an insurance policy or endorsement to an insured, an insurer may elect to post a policy or endorsement that does not contain personally identifiable information on its website provided it complies with all of the following:

1. The policy or endorsement is easily accessible on the website so long as it is in force;

2. The policy or endorsement is posted in a manner that enables the insured to print and save it using programs or applications widely available on the Internet and free of charge to use;

3. The insurer provides notice, in the manner it normally communicates with the insured at the time of issuance or renewal of the policy or endorsement, or at the time of any changes to the policy or endorsement, of a method by which the insured may obtain, upon request and without charge, at the choice of the insured, a paper or electronic copy of the policy or endorsement, or any changes to them, and the Internet address where the policy and endorsement are posted;

4. The insurer provides all of the following information on each declarations page, or similar document as appropriate to the line of coverage, provided to the insured at the time of issuance or renewal:

- a. a description of the exact policy and endorsement forms purchased by the insured,

- b. a method by which the insured may obtain, upon request and without charge, a paper or electronic copy of the policy or endorsement, or any changes to them,
- c. the Internet address where the policy and endorsement are posted; and

5. After expiration of the policy or endorsement, the insurer archives the expired policies or endorsements in accordance with the Oklahoma Insurance Department's general record retention requirements and makes them available upon request.

~~M.~~ N. A producer shall not be subject to civil liability for any harm or injury that occurs as a result of a party's election to receive any notice or document by electronic means or by an insurer's failure to deliver a notice or document by electronic means.

~~N.~~ O. This section may not be construed to modify, limit or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended.

SECTION 2. This act shall become effective November 1, 2024.

Passed the House of Representatives the 9th day of May, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the 17th day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____