

1 **SENATE FLOOR VERSION**

2 February 27, 2017

3 SENATE BILL NO. 372

By: Paxton of the Senate

4 and

5 Coody of the House

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7
8 An Act relating to insurance; defining terms;
9 authorizing electronic delivery of certain documents;
10 declaring electronic delivery of documents to be
11 legally equal to mail delivery; specifying terms of
12 consent for electronic delivery; authorizing
13 electronic delivery in certain situations requiring
14 verification or acknowledgment of receipt;
15 prohibiting denial of policy due to electronic
16 delivery of documents; prohibiting denial of policy
17 after consent for electronic delivery is withdrawn;
18 specifying terms of withdrawal of consent for
19 electronic delivery; denying applicability of act to
20 previous consent for electronic delivery; specifying
21 terms for continuing consent for electronic delivery
22 after effective date of act; authorizing document
23 delivery by mail if electronic delivery is
24 unavailable in certain situations; denying civil
liability for any harm or injury from electronic
delivery; providing for certain construction of this
act; providing for codification; and providing an
effective date

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 123 of Title 36, unless there is
created a duplication in numbering, reads as follows:

1 A. In this section, the following words shall have the
2 following meanings:

3 1. "Delivered by electronic means" includes:

4 a. delivery to an electronic mail address at which a
5 party has consented to receive notices or documents,
6 or

7 b. posting on an electronic network or site accessible
8 via the internet, mobile application, computer, mobile
9 device, tablet or any other electronic device,
10 together with separate notice of the posting which
11 shall be provided by electronic mail to the address at
12 which the party has consented to receive notice, or by
13 any other delivery method that has been consented to
14 by the party.

15 2. "Party" means any recipient of any notice or document
16 required as part of an insurance transaction, including but not
17 limited to an applicant, an insured, a policyholder or an annuity
18 contract holder.

19 B. Subject to the requirements of this section, any notice to a
20 party or any other document required under applicable law in an
21 insurance transaction, or that is to serve as evidence of insurance
22 coverage, may be delivered, stored and presented by electronic
23 means, so long as it meets the requirements of the Uniform
24

1 Electronic Transactions Act pursuant to Section 15-101, et seq of
2 Title 12A of the Oklahoma Statutes.

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

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

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

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

14 a. the right of the party to withdraw consent to have a
15 notice or document delivered by electronic means, at
16 any time, and any conditions or consequences imposed
17 in the event consent is withdrawn,

18 b. the types of notices and documents to which the
19 party's consent would apply,

20 c. the right of a party to have a notice or document
21 delivered in paper form, and

22 d. the procedures a party must follow to withdraw consent
23 to have a notice or document delivered by electronic
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1 means and to update the party's electronic mail
2 address;

3 3. The party:

4 a. before giving consent, is provided with a statement of
5 the hardware and software requirements for access to
6 and retention of a notice or document delivered by
7 electronic means, and

8 b. consents electronically, or confirms consent
9 electronically, in a manner that reasonably
10 demonstrates that the party can access information in
11 the electronic form that will be used for notices or
12 documents delivered by electronic means as to which
13 the party has given consent;

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

17 5. After consent of the party is given, the insurer, in the
18 event a change in the hardware or software requirements needed to
19 access or retain a notice or document delivered by electronic means
20 creates a material risk that the party will not be able to access or
21 retain a subsequent notice or document to which the consent applies:

22 a. provides the party with a statement that describes:
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1 (1) the revised hardware and software requirements
2 for access to and retention of a notice or
3 document delivered by electronic means, and

4 (2) the right of the party to withdraw consent
5 without the imposition of any condition or
6 consequence that was not disclosed at the time of
7 initial consent, and

8 b. complies with paragraph 2 of this subsection.

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

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

17 G. The legal effectiveness, validity or enforceability of any
18 contract or policy of insurance executed by a party may not be
19 denied solely because of the failure to obtain electronic consent or
20 confirmation of consent of the party in accordance with subparagraph
21 b of paragraph 3 of subsection D of this section.

22 H. 1. A withdrawal of consent by a party does not affect the
23 legal effectiveness, validity or enforceability of a notice or
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1 document delivered by electronic means to the party before the
2 withdrawal of consent is effective.

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

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

10 I. This section does not apply to a notice or document
11 delivered by an insurer in an electronic form before the effective
12 date of this act to a party who, before that date, has consented to
13 receive notice or document in an electronic form otherwise allowed
14 by law.

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

- 21 1. Provide the party with a statement that describes:
- 22 a. the notices or documents that shall be delivered by
 - 23 electronic means under this section that were not
 - 24 previously delivered electronically, and

1 b. the party's right to withdraw consent to have notices
2 or documents delivered by electronic means, without
3 the imposition of any condition or consequence that
4 was not disclosed at the time of initial consent; and

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

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

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

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

13 L. A producer shall not be subject to civil liability for any
14 harm or injury that occurs as a result of a party's election to
15 receive any notice or document by electronic means or by an
16 insurer's failure to deliver a notice or document by electronic
17 means.

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

21 SECTION 2. This act shall become effective November 1, 2017.

22 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
23 February 27, 2017 - DO PASS