

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE
5 BILL NO. 372

By: Paxton of the Senate

and

Coody of the House

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9 An Act relating to insurance; defining terms;
10 authorizing electronic delivery of certain documents;
11 declaring electronic delivery of documents to be
12 legally equal to mail delivery; specifying terms of
13 consent for electronic delivery; authorizing
14 electronic delivery in certain situations requiring
15 verification or acknowledgment of receipt;
16 prohibiting denial of policy due to electronic
17 delivery of documents; prohibiting denial of policy
18 after consent for electronic delivery is withdrawn;
19 specifying terms of withdrawal of consent for
20 electronic delivery; denying applicability of act to
21 previous consent for electronic delivery; specifying
22 terms for continuing consent for electronic delivery
23 after effective date of act; authorizing document
24 delivery by mail if electronic delivery is
 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:

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

4 A. In this section, the following words shall have the
5 following meanings:

6 1. "Delivered by electronic means" includes:

7 a. delivery to an electronic mail address at which a
8 party has consented to receive notices or documents,
9 or

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

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

22 B. Subject to the requirements of this section, any notice to a
23 party or any other document required under applicable law in an
24 insurance transaction, or that is to serve as evidence of insurance

1 coverage, may be delivered, stored and presented by electronic
2 means, so long as it meets the requirements of the Uniform
3 Electronic Transactions Act pursuant to Section 15-101, et seq. of
4 Title 12A of the Oklahoma Statutes.

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

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

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

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

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

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

22 c. the right of a party to have a notice or document
23 delivered in paper form, and
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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 (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.

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23 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/29/2017 - DO
24 PASS.