

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

6  
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17 after consent for electronic delivery is withdrawn;  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

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

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 123 of Title 36, unless there is  
24 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  
24

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:  
23  
24

- 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  
24

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

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. 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. 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.

M. 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, 2017.

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