

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 3304

By: Bennett and Hefner of the
House

4 and

5 Coleman of the Senate

6

7

8 An Act relating to insurance; amending 36 O.S. 2021,
9 Section 123, which relates to delivery and storage of
electronic documents; providing definitions;
10 modifying definition; permitting plan sponsor of a
health benefit plan to take certain actions on behalf
11 of certain covered persons; requiring certain actions
by plan sponsor; requiring certain actions by the
insurer for the health benefit plan; requiring
12 insurer to apprise certain parties of significance of
certain notice or documents; and providing an
13 effective date.

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16 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

17

18 "An Act relating to insurance; amending 36 O.S. 2021,
19 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
20 storage of electronic documents; providing
definitions; modifying definition; permitting plan
21 sponsor of a health benefit plan to take certain
actions on behalf of certain covered persons;
22 requiring certain actions by plan sponsor; requiring
certain actions by the insurer for the health benefit
23 plan; requiring insurer to apprise certain parties of
significance of certain notice or documents; updating

24

1 statutory references; and providing an effective
2 date.

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

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

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

11 1. "Delivered by electronic means" includes:

12 a. delivery to an electronic mail address at which a
13 party has consented to receive notices or documents,
14 or

15 b. posting on an electronic network or site accessible
16 via the Internet, mobile application, computer, mobile
17 device, tablet or any other electronic device,
18 together with separate notice of the posting which
19 shall be provided by electronic mail to the address at
20 which the party has consented to receive notice, or by
21 any other delivery method that has been consented to
22 by the party~~;~~;

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

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

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

12 B. Subject to the requirements of this section, any notice to a
13 party or any other document required under applicable law in an
14 insurance transaction, or that is to serve as evidence of insurance
15 coverage, may be delivered, stored and presented by electronic
16 means, so long as it meets the requirements of the Uniform
17 Electronic Transactions Act pursuant to Section 15-101~~7~~, et seq. of
18 Title 12A of the Oklahoma Statutes.

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

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

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

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

7 a. the right of the party to withdraw consent to have a
8 notice or document delivered by electronic means, at
9 any time, and any conditions or consequences imposed
10 in the event consent is withdrawn,

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

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

15 d. the procedures a party must follow to withdraw consent
16 to have a notice or document delivered by electronic
17 means and to update the party's electronic mail
18 address;

19 3. The party:

20 a. before giving consent, is provided with a statement of
21 the hardware and software requirements for access to
22 and retention of a notice or document delivered by
23 electronic means, and
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1 b. consents electronically, or confirms consent
2 electronically, in a manner that reasonably
3 demonstrates that the party can access information in
4 the electronic form that will be used for notices or
5 documents delivered by electronic means as to which
6 the party has given consent;

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

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

15 a. provides the party with a statement that describes:

16 (1) the revised hardware and software requirements
17 for access to and retention of a notice or
18 document delivered by electronic means, and

19 (2) the right of the party to withdraw consent
20 without the imposition of any condition or
21 consequence that was not disclosed at the time of
22 initial consent, and

23 b. complies with paragraph 2 of this subsection.

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

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

8 a. confirm that the covered person routinely uses
9 electronic communications during the normal course of
10 employment and is able to access and retain electronic
11 communications that may be delivered by the insurer,
12 and

13 b. inform the party in any manner the plan sponsor deems
14 appropriate that such consent will be provided, and
15 that notices and documents related to the plan may be
16 delivered to the party's work electronic mail address
17 unless the party affirmatively opts out of delivery by
18 electronic means or provides an alternative electronic
19 mail address.

20 3. Before providing delivery of a notice or document by
21 electronic means pursuant to this subsection, the insurer for the
22 health benefit plan must:
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1 a. provide the party with a clear and conspicuous
2 statement informing the person of all of the
3 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 ~~J. K.~~ If the consent of a party to receive certain notices or
14 documents in an electronic form is on file with an insurer before
15 ~~the effective date of this act~~ November 1, 2017, and pursuant to
16 this section, an insurer intends to deliver additional notices or
17 documents to such party in an electronic form, then prior to
18 delivering such additional notices or documents electronically, the
19 insurer shall:

20 1. Provide the party with a statement that describes:

- 21 a. the notices or documents that shall be delivered by
22 electronic means under this section that were not
23 previously delivered electronically, and
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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.~~ L. An insurer shall deliver a notice or document by any
7 other delivery method permitted by law other than electronic means
8 if:

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

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

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

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

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

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

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

- 13 a. a description of the exact policy and endorsement
14 forms purchased by the insured,
- 15 b. a method by which the insured may obtain, upon request
16 and without charge, a paper or electronic copy of the
17 policy or endorsement, or any changes to them,
- 18 c. the Internet address where the policy and endorsement
19 are posted; and

20 5. After expiration of the policy or endorsement, the insurer
21 archives the expired policies or endorsements in accordance with the
22 Oklahoma Insurance Department's general record retention
23 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 Senate the 17th day of April, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2024.

Presiding Officer of the House
of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 3304

By: Bennett and Hefner of the
House

3 and

4 Coleman of the Senate
5
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7 An Act relating to insurance; amending 36 O.S. 2021,
8 Section 123, which relates to delivery and storage of
9 electronic documents; providing definitions;
10 modifying definition; permitting plan sponsor of a
11 health benefit plan to take certain actions on behalf
12 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.

13
14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 3. AMENDATORY 36 O.S. 2021, Section 123, is
17 amended to read as follows:

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

20 1. "Delivered by electronic means" includes:

21 a. delivery to an electronic mail address at which a
22 party has consented to receive notices or documents,
23 or
24

1 b. posting on an electronic network or site accessible
2 via the Internet, mobile application, computer, mobile
3 device, tablet or any other electronic device,
4 together with separate notice of the posting which
5 shall be provided by electronic mail to the address at
6 which the party has consented to receive notice, or by
7 any other delivery method that has been consented to
8 by the party.

9 2. "Health benefit plan" means an employer policy, contract,
10 certificate, or agreement entered into, offered by, or issued by an
11 insurer to provide, deliver, arrange for, pay for, or reimburse any
12 of the costs of health care services, including a vision or dental
13 benefit plan and a self-insured plan as permitted under the Employee
14 Retirement Income Security Act of 1974.

15 3. "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, a covered
18 person, or an annuity contract holder.

19 4. "Plan sponsor" means a person, other than a regulated
20 entity, who establishes, adopts, or maintains a health benefit plan
21 that covers residents of this state, including a plan established,
22 adopted, or maintained by an employer or jointly by an employer and
23 one or more employee organizations, an association, a committee, a
24

1 joint board of trustees, or any similar group of representatives who
2 establish, adopt, or maintain a plan.

3 B. Subject to the requirements of this section, any notice to a
4 party or any other document required under applicable law in an
5 insurance transaction, or that is to serve as evidence of insurance
6 coverage, may be delivered, stored and presented by electronic
7 means, so long as it meets the requirements of the Uniform
8 Electronic Transactions Act pursuant to Section 15-101, et seq. of
9 Title 12A of the Oklahoma Statutes.

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

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

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

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

21 a. the right of the party to withdraw consent to have a
22 notice or document delivered by electronic means, at
23 any time, and any conditions or consequences imposed
24 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

1 access or retain a notice or document delivered by electronic means
2 creates a material risk that the party will not be able to access or
3 retain a subsequent notice or document to which the consent applies:

4 a. provides the party with a statement that describes:

5 (1) the revised hardware and software requirements

6 for access to and retention of a notice or

7 document delivered by electronic means, and

8 (2) the right of the party to withdraw consent

9 without the imposition of any condition or

10 consequence that was not disclosed at the time of

11 initial consent, and

12 b. complies with paragraph 2 of this subsection.

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

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

20 a. confirm that the covered person routinely uses

21 electronic communications during the normal course of

22 employment and is able to access and retain electronic

23 communications that may be delivered by the insurer,

24 and

1 b. inform the party in any manner the plan sponsor deems
2 appropriate that such consent will be provided, and
3 that notices and documents related to the plan may be
4 delivered to the party's work electronic mail address
5 unless the party affirmatively opts out of delivery by
6 electronic means or provides an alternative electronic
7 mail address.

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

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

- 14 (1) the types of notices and documents that may
15 be delivered to the covered person by
16 electronic means,
- 17 (2) the right of the party to withdraw consent
18 to have a notice or document delivered by
19 electronic means at any time without charge,
- 20 (3) the procedures the party must follow to
21 withdraw consent to have a notice or
22 document delivered by electronic means and
23 to update the person's electronic mail
24 address, and

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

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

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

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

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

17 ~~F.~~ G. If a provision of this title or applicable law requiring
18 a notice or document to be provided to a party expressly requires
19 verification or acknowledgment of receipt of the notice or document,
20 the notice or document may be delivered by electronic means only if
21 the method used provides for verification or acknowledgment of
22 receipt.

23 ~~G.~~ H. The legal effectiveness, validity or enforceability of
24 any contract or policy of insurance executed by a party may not be

1 denied solely because of the failure to obtain electronic consent or
2 confirmation of consent of the party in accordance with subparagraph
3 b of paragraph 3 of subsection D of this section.

4 ~~H.~~ I. 1. A withdrawal of consent by a party does not affect
5 the legal effectiveness, validity or enforceability of a notice or
6 document delivered by electronic means to the party before the
7 withdrawal of consent is effective.

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

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

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

20 ~~J.~~ K. If the consent of a party to receive certain notices or
21 documents in an electronic form is on file with an insurer before
22 the effective date of this act, and pursuant to this section, an
23 insurer intends to deliver additional notices or documents to such
24

1 party in an electronic form, then prior to delivering such
2 additional notices or documents electronically, the insurer shall:

3 1. Provide the party with a statement that describes:

4 a. the notices or documents that shall be delivered by
5 electronic means under this section that were not
6 previously delivered electronically, and

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

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

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

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

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

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

~~M. N.~~ 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 4. This act shall become effective November 1, 2024.

Passed the House of Representatives the 13th day of March, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the _____ day of _____, 2024.

Presiding Officer of the Senate