

As Amended by House Committee

As Amended by Senate Committee

Session of 2018

SENATE BILL No. 348

By Committee on Financial Institutions and Insurance

2-1

1 AN ACT concerning insurance; authorizing electronic delivery as the
2 standard method of delivery for certain health benefit plan documents;
3 amending K.S.A. 2017 Supp. 40-5802, 40-5803 and 40-5804 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2017 Supp. 40-5802 is hereby amended to read as
8 follows: 40-5802. (a) This act allows the use of electronic notices and
9 documents in lieu of any other provision of law for the sending of
10 insurance notices and documents. *Except as provided in subsection (b)*, in
11 order to send electronic notices and documents to another party the insurer
12 must obtain the consent of the other party as provided in this act.

13 (b) (1) *Notwithstanding any other provision of law, a health benefit*
14 *plan or nonprofit dental services corporation may utilize electronic*
15 *delivery as its standard method to send the explanation of benefits and*
16 *policy, including federally required summary of benefit and coverage*
17 *documents, to a party; ~~so long as printed documents are readily available~~*
18 **only if: (A) Paper documents are readily available; and (B)**
19 **notification has been provided to the party explaining the party's**
20 **option to receive paper documents via U.S. mail.**

21 (2) *If a party notifies a health benefit plan or nonprofit dental*
22 *services corporation that the party wishes to receive paper documents via*
23 *U.S. mail, the health benefit plan or nonprofit dental services corporation*
24 *shall comply.*

25 Sec. 2. K.S.A. 2017 Supp. 40-5803 is hereby amended to read as
26 follows: 40-5803. For the purposes of this act:

27 (a) "Delivered by electronic means" includes:

28 (1) Delivery to an electronic mail address at which a party has
29 consented to receive notices or documents; or

30 (2) posting on an electronic network or site accessible via the internet,
31 mobile application, computer, mobile device, tablet or any other electronic
32 device, together with separate notice of the posting, which shall be
33 provided by electronic mail to the address at which the party has consented
34 to receive notice or by any other delivery method that has been consented

1 to by the party.

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

5 (c) *"Health benefit plan" means the same as in K.S.A. ~~40-2209d~~ 40-*
6 **4602, and amendments thereto. "Health benefit plan" shall also include**
7 **any: (1) Individual health insurance policy; (2) individual or group**
8 **dental insurance policy; or (3) nonprofit dental services corporation.**

9 (d) *"Nonprofit dental services corporation" means a nonprofit*
10 *corporation organized pursuant to the nonprofit dental service*
11 *corporation act, K.S.A. 40-19a01 et seq., and amendments thereto.*

12 Sec. 3. K.S.A. 2017 Supp. 40-5804 is hereby amended to read as
13 follows: 40-5804. (a) Subject to subsection (c), any notice to a party or any
14 other document required under applicable law in an insurance transaction
15 or that is to serve as evidence of insurance coverage may be delivered,
16 stored and presented by electronic means so long as it meets the
17 requirements of this act.

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

22 (c) A notice or document may be delivered by electronic means by an
23 insurer to a party under this section if:

24 (1) The party has affirmatively consented to that method of delivery
25 and has not withdrawn the consent;

26 (2) the party, before giving consent, is provided with a clear and
27 conspicuous statement informing the party of:

28 (A) Any right or option of the party to have the notice or document
29 provided or made available in paper or another non-electronic form;

30 (B) the right of the party to withdraw consent to have a notice or
31 document delivered by electronic means and any fees, conditions or
32 consequences imposed in the event consent is withdrawn;

33 (C) whether the party's consent applies: (i) Only to the particular
34 transaction as to which the notice or document must be given; or (ii) to
35 identified categories of notices or documents that may be delivered by
36 electronic means during the course of the parties' relationship;

37 (D) (i) the means, after consent is given, by which a party may obtain
38 a paper copy of a notice or document delivered by electronic means; and
39 (ii) the fee, if any, for the paper copy; and

40 (E) the procedure a party must follow to withdraw consent to have a
41 notice or document delivered by electronic means and to update
42 information needed to contact the party electronically;

43 (3) the party, before giving consent, is provided with a statement of

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

7 (4) after consent of the party is given, the insurer, in the event a
8 change in the hardware or software requirements needed to access or retain
9 a notice or document delivered by electronic means creates a material risk
10 that the party will not be able to access or retain a subsequent notice or
11 document to which the consent applies, provides the party with a statement
12 of: (A) The revised hardware and software requirements for access to and
13 retention of a notice or document delivered by electronic means; and (B)
14 the right of the party to withdraw consent without the imposition of any
15 fee, condition, or consequence that was not disclosed under subsection (c)
16 (2).

17 (d) This act does not affect requirements related to content or timing
18 of any notice or document required under applicable law.

19 (e) If a provision of this act or applicable law requiring a notice or
20 document to be provided to a party expressly requires verification or
21 acknowledgment of receipt of the notice or document, the notice or
22 document may be delivered by electronic means only if the method used
23 provides for verification or acknowledgment of receipt.

24 (f) The legal effectiveness, validity, or enforceability of any contract
25 or policy of insurance executed by a party may not be denied solely
26 because of the failure to obtain electronic consent or confirmation of
27 consent of the party in accordance with subsection (c)(3).

28 (g) A withdrawal of consent by a party does not affect the legal
29 effectiveness, validity, or enforceability of a notice or document delivered
30 by electronic means to the party before the withdrawal of consent is
31 effective. A withdrawal of consent by a party is effective within a
32 reasonable period of time after receipt of the withdrawal by the insurer.
33 Failure by an insurer to comply with subsection (c)(4) may be treated, at
34 the election of the party, as a withdrawal of consent for purposes of this
35 section.

36 (h) This section does not apply to a notice or document delivered by
37 an insurer in an electronic form before the effective date of this act to a
38 party who, before that date, has consented to receive a notice or document
39 in an electronic form otherwise allowed by law.

40 (i) If the consent of a party to receive certain notices or documents in
41 an electronic form is on file with an insurer before the effective date of this
42 act, and pursuant to this section, an insurer intends to deliver additional
43 notices or documents to such party in an electronic form, then prior to

1 delivering such additional notices or documents electronically, the insurer
2 shall notify the party of the notices or documents that may be delivered by
3 electronic means under this section that were not previously delivered
4 electronically and the party's right to withdraw consent to have notices or
5 documents delivered by electronic means.

6 (j) Notwithstanding any other provisions of this section, insurance
7 policies and endorsements that do not contain personally identifiable
8 information may be mailed, delivered or posted on the insurer's website. If
9 the insurer elects to post insurance policies and endorsements on its
10 website in lieu of mailing or delivering such policies and endorsements to
11 the insured, such insurer shall comply with all of the following conditions:

12 (1) The policy and endorsements shall be easily accessible and
13 remain that way for as long as the policy is in force;

14 (2) after the expiration of the policy, the insurer shall archive its
15 expired policies and endorsements for five years and make them available
16 upon request;

17 (3) the policies and endorsements shall be posted in a manner that
18 enables the insured to print and save the policy and endorsements using
19 programs or applications that are widely available on the internet and free
20 to use;

21 (4) the insurer shall provide notice, at the time of issuance of the
22 initial policy forms and any renewal forms, of a method by which insureds
23 may obtain, upon request and without charge, a paper or electronic copy of
24 their policy or endorsements;

25 (5) on each declarations page issued to an insured, the insurer shall
26 clearly identify the exact policy and endorsement forms purchased by the
27 insured; and

28 (6) the insurer shall provide notice of any changes to the forms or
29 endorsements, and of the insured's right to obtain, upon request and
30 without charge, a paper or electronic copy of such forms or endorsements.

31 (k) Except as otherwise provided by law, if an oral communication or
32 a recording of an oral communication from a party can be reliably stored
33 and reproduced by an insurer, the oral communication or recording may
34 qualify as a notice or document delivered by electronic means for purposes
35 of this section. If a provision of this title or applicable law requires a
36 signature or notice or document to be notarized, acknowledged, verified or
37 made under oath, the requirement is satisfied if the electronic signature of
38 the person authorized to perform those acts, together with all other
39 information required to be included by the provision, is attached to or
40 logically associated with the signature, notice or document.

41 (l) This section shall not affect any obligation of the insurer to
42 provide notice to any person other than the insured of any notice provided
43 to the insured.

1 (m) This section shall not be construed to modify, limit or supersede
2 the provisions of the federal electronic signatures in global and national
3 commerce act, public law 106-229, or the provisions of the uniform
4 electronic transactions act, K.S.A. 16-1601 et seq., and amendments
5 thereto.

6 (n) The provisions of ~~this act~~ *the electronic notice and document act*
7 shall not apply to any mutual insurance company organized pursuant to
8 article 12a of chapter 40 of the Kansas Statutes Annotated, and
9 amendments thereto.

10 (o) *The provisions of this section shall not apply to the electronic*
11 *delivery of explanation of benefits and policies, including federally*
12 *required summary of benefit and coverage documents, to a party by a*
13 *health benefit plan or **nonprofit dental services corporation.***

14 Sec. 4. K.S.A. 2017 Supp. 40-5802, 40-5803 and 40-5804 are hereby
15 repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the statute book.