

SENATE BILL No. 553

By Committee on Federal and State Affairs

3-14

1 AN ACT concerning insurance; relating to health insurance; permitting a
2 plan sponsor to authorize electronic delivery of plan documents and
3 identification cards for certain insured individuals covered by a health
4 benefit plan; amending K.S.A. 40-5801, 40-5803 and 40-5804 and
5 repealing the existing sections; also repealing K.S.A. 40-5802.

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

8 New Section 1. (a) The plan sponsor of a health benefit plan may, on
9 behalf of health benefit plan covered persons, provide the consent to the
10 delivery of all communications related to the plan by electronic means,
11 otherwise required by K.S.A. 40-5804, and amendments thereto, and to the
12 electronic delivery of any health insurance identification cards.

13 (b) Before providing consent on behalf of a health benefit plan
14 covered person, pursuant to subsection (a), a plan sponsor shall confirm
15 that such health benefit plan covered person routinely, at least once every
16 24 hours during the work week, uses electronic communications during the
17 normal course of employment of such health benefit plan covered person.

18 (c) Before utilizing electronic means to deliver any plan
19 communications or health insurance identification cards, the health benefit
20 plan shall:

21 (1) Provide the health benefit plan covered person with an
22 opportunity to opt out of electronic delivery and select United States mail
23 as the preferred method of delivery for such health benefit plan covered
24 person; and

25 (2) document that all applicable requirements under K.S.A. 40-5804,
26 and amendments thereto, have been satisfied.

27 Sec. 2. K.S.A. 40-5801 is hereby amended to read as follows: 40-
28 5801. The provisions of K.S.A. 40-5801 through 40-5804 *and section 1*,
29 and amendments thereto, shall be known and may be cited as the
30 electronic notice and document act.

31 Sec. 3. K.S.A. 40-5803 is hereby amended to read as follows: 40-
32 5803. For the purposes of this act:

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

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

36 (2) posting on an electronic network or site accessible via the internet,

1 mobile application, computer, mobile device, tablet or any other electronic
2 device, together with separate notice of the posting, which shall be
3 provided by electronic mail to the address at which the party has consented
4 to receive notice or by any other delivery method that has been consented
5 to by the party.

6 (b) "Party" means any recipient of any notice or document required as
7 part of an insurance transaction, including, but not limited to, an applicant,
8 an insured, a policyholder or an annuity contract holder. *"Party" does not*
9 *include a "health benefit plan covered person."*

10 (c) "Health benefit plan" means the same as in K.S.A. 40-4602, and
11 amendments thereto. "Health benefit plan" shall also include any:

12 (1) Individual health insurance policy;

13 (2) individual or group dental insurance policy; or

14 (3) nonprofit dental services corporation.

15 (d) *"Health benefit plan covered person" means a policyholder,*
16 *subscriber, enrollee or other individual participating in a health benefit*
17 *plan.*

18 (e) *"Insured" means an individual who is covered by an insurance*
19 *policy, including a health benefit plan.*

20 (f) "Nonprofit dental services corporation" means a nonprofit
21 corporation organized pursuant to the nonprofit dental service corporation
22 act, K.S.A. 40-19a01 et seq., and amendments thereto.

23 (g) *"Plan sponsor" means the:*

24 (1) *Employer in the case of an employee benefit plan established or*
25 *maintained by a single employer;*

26 (2) *employee organization in the case of a plan established or*
27 *maintained by an employee organization; or*

28 (3) *association, committee, joint board of trustees or similar group of*
29 *representatives of the parties who establish or maintain the plan in the*
30 *case of a plan established or maintained by two or more employers or*
31 *jointly by one or more employers and one or more employee*
32 *organizations.*

33 Sec. 4. K.S.A. 40-5804 is hereby amended to read as follows: 40-
34 5804. (a) Subject to subsection (c), *or section 1, and amendments thereto,*
35 any notice to a party or any other document required under applicable law
36 in an insurance transaction or that is to serve as evidence of insurance
37 coverage may be delivered, stored and presented by electronic means so
38 long as it meets the requirements of this act.

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

43 (c) A notice or document may be delivered by electronic means by an

1 insurer to a party under this section if:

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

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

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

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

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

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

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

21 (3) the party, before giving consent, is provided with a statement of
22 the hardware and software requirements for access to and retention of a
23 notice or document delivered by electronic means; and consents
24 electronically, or confirms consent electronically, in a manner that
25 reasonably demonstrates that the party can access information in the
26 electronic form that will be used for notices or documents delivered by
27 electronic means as to which the party has given consent; and

28 (4) after consent of the party is given, the insurer, in the event a
29 change in the hardware or software requirements needed to access or retain
30 a notice or document delivered by electronic means creates a material risk
31 that the party will not be able to access or retain a subsequent notice or
32 document to which the consent applies, provides the party with a statement
33 of: (A) The revised hardware and software requirements for access to and
34 retention of a notice or document delivered by electronic means; and (B)
35 the right of the party to withdraw consent without the imposition of any
36 fee, condition, or consequence that was not disclosed under subsection (c)
37 (2).

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

40 (e) If a provision of this act or applicable law requiring a notice or
41 document to be provided to a party *or health benefit plan covered person*
42 expressly requires verification or acknowledgment of receipt of the notice
43 or document, the notice or document may be delivered by electronic

1 means only if the method used provides for verification or
2 acknowledgment of receipt.

3 (f) The legal effectiveness, validity, or enforceability of any contract
4 or policy of insurance executed by a party *or health benefit plan covered*
5 *person* may not be denied solely because of the failure to obtain electronic
6 consent or confirmation of consent of the party in accordance with
7 subsection (c)(3) *or section 1, and amendments thereto.*

8 (g) A withdrawal of consent by a party ~~does~~ *or health benefit plan*
9 *covered person shall* not affect the legal effectiveness, validity, or
10 enforceability of a notice or document delivered by electronic means to the
11 party *or health benefit plan covered person* before the withdrawal of
12 consent is effective. A withdrawal of consent by a party *or health benefit*
13 *plan covered person* is effective within a reasonable period of time after
14 receipt of the withdrawal by the insurer. Failure by an insurer to comply
15 with subsection (c)(4) may be treated, at the election of the party *or health*
16 *benefit plan covered person*, as a withdrawal of consent for purposes of
17 this section.

18 (h) This section does not apply to a notice or document delivered by
19 an insurer in an electronic form before the effective date of this act to a
20 party *or health benefit plan covered person* who, before that date, has
21 consented to receive a notice or document in an electronic form otherwise
22 allowed by law.

23 (i) If the consent of a party to receive certain notices or documents in
24 an electronic form is on file with an insurer before the effective date of this
25 act, and pursuant to this section, an insurer intends to deliver additional
26 notices or documents to such party in an electronic form, then prior to
27 delivering such additional notices or documents electronically, the insurer
28 shall notify the party of the notices or documents that may be delivered by
29 electronic means under this section that were not previously delivered
30 electronically and the party's right to withdraw consent to have notices or
31 documents delivered by electronic means.

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

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

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

43 (3) the policies and endorsements shall be posted in a manner that

1 enables the insured to print and save the policy and endorsements using
2 programs or applications that are widely available on the internet and free
3 to use;

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

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

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

14 (k) Except as otherwise provided by law, if an oral communication or
15 a recording of an oral communication from a party can be reliably stored
16 and reproduced by an insurer, the oral communication or recording may
17 qualify as a notice or document delivered by electronic means for purposes
18 of this section. If a provision of this title or applicable law requires a
19 signature or notice or document to be notarized, acknowledged, verified or
20 made under oath, the requirement is satisfied if the electronic signature of
21 the person authorized to perform those acts, together with all other
22 information required to be included by the provision, is attached to or
23 logically associated with the signature, notice or document.

24 (l) This section shall not affect any obligation of the insurer to
25 provide notice to any person other than the insured of any notice provided
26 to the insured.

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

32 (n) The provisions of the electronic notice and document act shall not
33 apply to any mutual insurance company organized pursuant to article 12a
34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

35 (o) The provisions of this section shall not apply to the electronic
36 delivery of explanation of benefits and policies, including federally
37 required summary of benefit and coverage documents, to a party by a
38 health benefit plan.

39 Sec. 5. K.S.A. 40-5801, 40-5802, 40-5803 and 40-5804 are hereby
40 repealed.

41 Sec. 6. This act shall take effect and be in force from and after its
42 publication in the statute book.