

By: Senator(s) Michel

To: Insurance

SENATE BILL NO. 2326

1 AN ACT TO CREATE THE "MISSISSIPPI INSURANCE E-COMMERCE ACT";
2 TO PROVIDE FOR LEGISLATIVE PURPOSE; TO DEFINE CERTAIN TERMS AS
3 USED IN THE ACT; TO PROVIDE CERTAIN REQUIREMENTS FOR ELECTRONIC
4 DELIVERY OF INSURANCE DOCUMENTS AND NOTICES; TO PROVIDE
5 REQUIREMENTS FOR AN INSURER WHEN A CHANGE IN HARDWARE OR SOFTWARE
6 IS NEEDED TO ACCESS OR RETAIN A NOTICE OR DOCUMENT TO BE DELIVERED
7 BY ELECTRONIC MEANS; TO PROVIDE APPLICABILITY OF THE ACT; TO
8 PROVIDE THAT CONTRACTS AND POLICIES ARE NOT AFFECTED BECAUSE OF
9 THE FAILURE OF THE INSURER TO OBTAIN ELECTRONIC CONSENT IF THE
10 NOTICE OR DOCUMENT IS DELIVERED IN PAPER FORM; TO PROVIDE FOR
11 WITHDRAWAL OF CONSENT BY A PARTY; TO REQUIRE ALTERNATIVE METHOD OF
12 DELIVERY; TO PROVIDE LIMITATION OF LIABILITY FOR INSURANCE
13 PRODUCERS; TO ALLOW AN INSURER TO POST AN INSURANCE POLICY AND AN
14 ENDORSEMENT ON THE INSURER'S WEBSITE IN LIEU OF MAILING OR
15 DELIVERING THE POLICY AND ENDORSEMENT TO THE INSURED UNDER CERTAIN
16 CONDITIONS; TO PROVIDE FOR CLAIM PAYMENTS BY ELECTRONIC TRANSFER;
17 TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ADOPT RULES AND
18 REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS ACT; AND FOR
19 RELATED PURPOSES.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

21 **SECTION 1. Title.** This act shall be known as the
22 "Mississippi Insurance E-Commerce Act."

23 **SECTION 2. Purpose.** The purpose of this act is to provide
24 consumers more choice, convenience and flexibility in managing
25 their insurance.



26 **SECTION 3. Definitions.** As used in this act, the following
27 definitions apply:

28 (a) "Delivered by electronic means" means either of the
29 following:

30 (i) Delivery to an electronic mail address at
31 which a party has consented to receive notices or documents.

32 (ii) Posting on an electronic network or site
33 accessible via the internet, mobile application, computer, mobile
34 device, tablet, or any other electronic device, together with
35 separate notice of the posting provided by electronic mail to the
36 address at which the party has consented to receive notice or by
37 any other delivery method that has been consented to by the party.
38 The separate notice of the posting shall contain the internet
39 address at which the documents are posted. For purposes of this
40 paragraph, delivery shall be effective upon the latter of the
41 posting or the actual delivery of the separate notice of the
42 posting.

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

47 **SECTION 4. Electronic delivery of insurance documents and**
48 **notices.** (1) Subject to the requirements of this section, any
49 notice to a party or any other document required by law in an
50 insurance transaction or that is to serve as evidence of insurance



51 coverage may be delivered, stored, and presented by electronic
52 means if the electronic means meet the requirements of the Uniform
53 Electronic Transactions Act, Section 75-12-1 et seq.

54 (2) Delivery of a notice or document in accordance with this
55 section shall be considered equivalent to and have the same effect
56 as any delivery method required by law, including delivery by
57 first class mail, first class mail with postage prepaid, certified
58 mail, certificate of mail, or certificate of mailing.

59 (3) A notice or document may be delivered by electronic
60 means by an insurer to a party pursuant to this section if all of
61 the following apply:

62 (a) The party has affirmatively consented
63 electronically, or confirmed consent electronically, in a manner
64 that reasonably demonstrates that the party can access information
65 in the electronic form that will be used for notices or documents
66 delivered by electronic means to which the party has given
67 consent, and the party has not withdrawn the consent.

68 (b) The party, before giving consent, is provided with
69 a clear and conspicuous statement informing the party of all of
70 the following:

71 (i) The hardware and software requirements for
72 access to and retention of a notice or document delivered by
73 electronic means.

74 (ii) The types of notices and documents to which
75 the party's consent would apply.



76 (iii) The right of the party to withdraw consent
77 to have a notice or document delivered by electronic means, at any
78 time, and any conditions or consequences imposed in the event
79 consent is withdrawn.

80 (iv) The procedures a party must follow to
81 withdraw consent, which can be no more burdensome than providing
82 consent, to have a notice or document delivered by electronic
83 means and to update the party's electronic mail address.

84 (v) The right of a party to have any notice or
85 document delivered, upon request, in paper form.

86 (4) An insurer shall take all measures reasonably calculated
87 to ensure that delivery by electronic means pursuant to this
88 section results in receipt of the notice or document by the party.

89 **SECTION 5. Change in hardware or software requirements.**

90 After the consent of a party is given, in the event a change in
91 the hardware or software requirements needed to access or retain a
92 notice or document to be delivered by electronic means creates a
93 material risk that the party will not be able to access or retain
94 the notice or document to which the consent applies, the insurer
95 shall not deliver a notice or document to the party by electronic
96 means unless the insurer complies with Section 4 of this act and
97 provides the party with a statement that describes all of the
98 following:



99 (a) The revised hardware and software requirements for
100 access to and retention of a notice or document delivered by
101 electronic means.

102 (b) The right of the party to withdraw consent without
103 the imposition of any condition or consequence that was not
104 disclosed at the time of initial consent.

105 **SECTION 6. Applicability.** (1) The provisions of this
106 section shall not be construed to affect requirements related to
107 content or timing of any notice or document required by any other
108 provision of law.

109 (2) If any other applicable law requiring a notice or
110 document to be provided to a party expressly requires confirmation
111 of receipt of the notice or document, the notice or document may
112 be delivered by electronic means only if the method used provides
113 for active confirmation of receipt by the recipient.

114 (3) This act shall not apply to a notice or document
115 delivered by an insurer in an electronic form before the effective
116 date of this act to a party who, before that date, has consented
117 to receive the notice or document in an electronic form otherwise
118 allowed by law.

119 **SECTION 7. Contracts and policies not affected.** The legal
120 effectiveness, validity, or enforceability of any contract or
121 policy of insurance executed by a party shall not be denied solely
122 because of the failure of the insurer to obtain electronic consent
123 or confirmation of consent of the party in accordance with the



124 provisions of this act if the notice or document is delivered in
125 paper form.

126 **SECTION 8. Withdrawal of consent.** (1) A withdrawal of
127 consent by a party shall not affect the legal effectiveness,
128 validity, or enforceability of a notice or document delivered by
129 electronic means to the party before the withdrawal of consent is
130 effective.

131 (2) A withdrawal of consent by a party shall be effective
132 within a reasonable period of time after receipt of the withdrawal
133 by the insurer.

134 (3) Failure by an insurer to comply with any provision of
135 Section 4 or 5 of this act may be treated, at the election of the
136 party, as a withdrawal of consent for purposes of this act.

137 **SECTION 9. Prior consent to receive notices or documents in**
138 **an electronic form.** If the consent of a party to receive certain
139 notices or documents in an electronic form is on file with an
140 insurer before the effective date of this act, and an insurer
141 intends to deliver additional notices or documents to the party in
142 an electronic form pursuant to this act, then prior to delivering
143 the additional notices or documents electronically, the insurer
144 shall comply with the provisions of Section 4 of this act and
145 shall provide the party with a statement that describes both of
146 the following:



147 (a) The notices or documents that shall be delivered by
148 electronic means that were not previously delivered
149 electronically.

150 (b) The party's right to withdraw consent to have
151 notices or documents delivered by electronic means, without the
152 imposition of any condition or consequence that was not disclosed
153 at the time of initial consent.

154 **SECTION 10. Alternative method of delivery required.** An
155 insurer shall deliver a notice or document by any other delivery
156 method permitted by law other than electronic means if either of
157 the following occurs:

158 (a) The insurer attempts to deliver the notice or
159 document by electronic means and has a reasonable basis for
160 believing that the notice or document has not been received by the
161 party.

162 (b) The insurer becomes aware that the electronic mail
163 address provided by the party is no longer valid.

164 The insured's consent to electronic delivery shall not
165 preclude the insurer from delivering a notice or document by any
166 other delivery method permitted by law.

167 **SECTION 11. Limitation of liability.** An insurance producer
168 shall not be subject to civil liability for any harm or injury
169 that occurs because of a party's election to receive any notice or
170 document by electronic means or by an insurer's failure to deliver



171 or a party's failure to receive a notice or document by electronic
172 means.

173 **SECTION 12. Posting policy on internet.** (1) An insurance
174 policy and an endorsement that does not contain personally
175 identifiable information may be mailed, delivered or, if the
176 insurer obtains separate, specific consent, posted on the
177 insurer's website. If the insurer elects to post an insurance
178 policy and an endorsement on the insurer's website in lieu of
179 mailing or delivering the policy and endorsement to the insured,
180 the insurer shall comply with the following conditions:

181 (a) The policy and an endorsement must be accessible to
182 the insured and producer of record and remain that way while the
183 policy is in force;

184 (b) After the expiration of the policy, the insurer
185 shall either:

186 (i) Make the expired policy and endorsement
187 available upon request, for a period of five (5) years; or

188 (ii) If the insurer continues to make the expired
189 policy or endorsement available on its website, keep the insured's
190 user ID active for a period of five (5) years;

191 (c) The policy and endorsement must be posted in a
192 manner that enables the insured and producer of record to print
193 and save the policy and endorsement using a program or application
194 that is widely available on the internet and free to use;



195 (d) The insurer shall provide the following information
196 in, or simultaneous with, each declaration page provided at the
197 time of issuance of the initial policy and any renewals of the
198 policy:

199 (i) A description of the exact policy and
200 endorsement form purchased by the insured;

201 (ii) A description of the insured's right to
202 receive, upon request and without charge, an electronic and/or a
203 paper copy of the policy and endorsement; and

204 (iii) The internet address at which the policy and
205 endorsement are posted;

206 (e) The insurer, upon an insured's request and once
207 without charge following receipt of the initial copy, shall mail a
208 paper copy of the policy and endorsement to the insured; and

209 (f) The insurer shall provide notice, either
210 electronically or in writing at the insured's option, of any
211 change to the forms or endorsement; the insured's right to obtain,
212 upon request and once without charge following receipt of the
213 initial copy, a paper copy of the forms or endorsement; and the
214 internet address at which the forms or endorsement are posted.

215 (2) This section does not affect the timing or content of
216 any disclosure or document required to be provided or made
217 available to any insured under applicable law.

218 **SECTION 13. Receipt of claim payments by electronic**
219 **transfer.** All claims brought by insureds, workers' compensation



220 claimants, or third parties against an insurer shall be paid by
221 check or draft of the insurer or, if offered by the insurer and
222 the claimant consents, electronic transfer of funds to the order
223 of the claimant to whom payment of the claim is due pursuant to
224 the policy provisions, or her/his attorney, or upon direction of
225 the claimant to one specified. However, when the employer has
226 advanced the claims payment to the claimant, the check or draft
227 shall be paid jointly to the claimant and the employer; or, if
228 consented by all parties, the electronic payment shall be paid to
229 the trust account. The check or draft shall be paid jointly until
230 the amount of the advanced claims payment has been recovered by
231 the employer. The electronic payment shall be held in trust until
232 the amount of the advanced claims payment has been recovered by
233 the employer.

234 **SECTION 14. Rules.** The Insurance Commissioner may adopt
235 rules and regulations to implement the provisions of this act.

236 **SECTION 15.** This act shall take effect and be in force from
237 and after July 1, 2022.

