

BILL ANALYSIS

S.B. 1074
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that most states have adopted the Uniform Electronic Transactions Act which validates electronic versions of signatures, records, and storage as the legal equivalent to their paper counterparts. Additionally, the federal government enacted the Electronic Signatures in Global and National Commerce Act to allow the use of electronic records to satisfy any regulation requiring that such information be provided in writing. S.B. 1074 seeks to make e-commerce a viable and equivalent channel of communication in the insurance industry by allowing a property and casualty insurance company to legally deliver insurance documents and notices electronically to an insured when the insured agrees to conduct business by electronic means.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1074 amends the Insurance Code to authorize the delivery, storage, and presentment by electronic means of a required notice or other written communication with a party in an insurance transaction, or that is to serve as evidence of insurance coverage, only if such delivery, storage, or presentment complies with the state Uniform Electronic Transactions Act. The bill defines "party" to mean a recipient, including an applicant, insured, policyholder, enrollee, or annuity contract holder, of a notice or document or of information required as part of an insurance transaction. The bill establishes that delivery of a written communication in compliance with the bill's provisions is equivalent to any delivery method required by law. The bill authorizes a written communication to be electronically delivered to a party by a regulated entity if the party affirmatively consented to such delivery and has not withdrawn the consent; if the party, before giving consent, is provided with a clear and conspicuous statement informing the party of certain specified rights or options relating to such consent; and if the party, before giving consent, is provided with a statement identifying the hardware and software requirements for accessing and retaining such written communication and electronically consents or confirms consent in a manner that reasonably demonstrates that the party can access a written communication in the electronic form used to deliver the communication.

S.B. 1074 requires a regulated entity, in the event a change in such hardware or software requirements creates a material risk that the party may be unable to access or retain a subsequent written communication to which the party's consent applies, to provide the party with a statement identifying the revised hardware and software requirements for access to and retention of such written communication and disclosing the party's right to withdraw consent without the imposition of any fee, condition, or consequence not otherwise disclosed and requires the regulated entity to obtain electronic consent or electronically confirmed consent from the party. The bill establishes that failure by a regulated entity to comply with provisions regarding revised hardware and software requirements may be treated by the party as a withdrawal of consent. The

bill specifies that its provisions do not affect requirements for the content or timing of any required written communication.

S.B. 1074 authorizes electronic delivery of written communication where verification or acknowledgment of receipt is required only if the method used for such delivery provides for verification or acknowledgment. The bill prohibits denial of the legal effectiveness, validity, or enforceability of any insurance contract or policy executed by a party solely due to the failure to obtain electronic consent or confirmation of consent of the party in accordance with the bill's provisions. The bill establishes that a withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a written communication delivered to the party by electronic means before the withdrawal of consent is effective and establishes that a withdrawal of consent is effective within a reasonable period of time after the date the affected regulated entity receives it.

S.B. 1074 establishes that if a party's consent to receive a written communication by electronic means is on file with a regulated entity before January 1, 2014, and if the entity intends to deliver written communications to the party as provided by the bill, the entity is required, before it is authorized to electronically deliver additional written communications, to notify the party of the written communications that may be delivered by electronic means that were not previously electronically delivered and of the party's right to withdraw consent to have written communications delivered by electronic means. The bill prohibits an oral communication or a recording of an oral communication from qualifying as a written communication delivered by electronic means for purposes of the bill's provisions. The bill establishes that if a signature on a written communication is required by law to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the notary public or other authorized person and the other required information are attached to or logically associated with the signature or written communication.

S.B. 1074 removes statutory provisions requiring the commissioner of insurance to adopt rules necessary to implement and enforce regulations relating to the electronic transactions of a regulated entity. The bill includes in the definition of "regulated entity" each person or program regulated by the Texas Department of Insurance (TDI), and includes in the list of regulated entities an agency or agent of an insurer, organization, person, or program regulated by TDI.

S.B. 1074 establishes that its provisions do not apply to a notice of cancellation or termination of health insurance or benefits or life insurance or benefits, excluding annuities. The bill establishes that its provisions modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act.

EFFECTIVE DATE

September 1, 2013.