

By: Bonnen of Galveston

H.B. No. 2037

A BILL TO BE ENTITLED

AN ACT

relating to electronic transmission of documentation involved in certain insurance transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 35, Insurance Code, is amended by designating Sections 35.001 through 35.004 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. ELECTRONIC TRANSACTIONS GENERALLY

SECTION 2. Section 35.003, Insurance Code, is amended to read as follows:

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. Subject to Subchapter B, a [A] regulated entity may conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business each party to the business agrees to conduct the business electronically.

SECTION 3. Chapter 35, Insurance Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ELECTRONIC DELIVERY OF NOTICES, DOCUMENTS, AND INFORMATION

Sec. 35.051. DEFINITIONS. In this subchapter:

(1) "Delivered by electronic means" includes:

(A) delivery to an e-mail address at which a party consented to receive notices, documents, or information; and

1 (B) posting on an electronic network or Internet
2 website accessible by an electronic device, including a computer,
3 mobile device, or tablet, or a software application, including a
4 mobile device application.

5 (2) "Party" means a recipient, including an applicant,
6 insured, policyholder, or annuity contract holder, of a notice or a
7 document or information required as part of an insurance
8 transaction.

9 (3) "Written communication" means a notice, document,
10 or other information provided in writing.

11 Sec. 35.052. CONSENT. (a) Subject to Subsection (c), a
12 notice to a party or other written communication with a party
13 required in an insurance transaction or that is to serve as evidence
14 of insurance coverage may be delivered, stored, and presented by
15 electronic means only if the delivery, storage, or presentment
16 complies with the Uniform Electronic Transactions Act (Chapter 322,
17 Business & Commerce Code).

18 (b) Delivery of a written communication in compliance with
19 this section is equivalent to any delivery method required by law,
20 including delivery by first class mail, first class mail, postage
21 prepaid, or certified mail.

22 (c) A written communication may be delivered by electronic
23 means to a party by a regulated entity under this section if:

24 (1) the party affirmatively consented to delivery by
25 electronic means and has not withdrawn the consent;

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

1 (A) any right or option the party may have for the
2 written communication to be provided or made available in paper or
3 another nonelectronic form;

4 (B) the right of the party to withdraw consent
5 under this section and any fees, conditions, or consequences
6 imposed if consent is withdrawn;

7 (C) whether the party's consent applies:

8 (i) only to a specific transaction for
9 which the written communication must be given; or

10 (ii) to identified categories of written
11 communications that may be delivered by electronic means during the
12 course of the relationship between the party and the regulated
13 entity;

14 (D) the means, after consent is given, by which a
15 party may obtain a paper copy of a written communication delivered
16 by electronic means and the amount of the fee, if any, for a paper
17 copy; and

18 (E) the procedure a party must follow to:

19 (i) withdraw consent under this section;
20 and

21 (ii) update information needed for the
22 regulated entity to contact the party electronically; and

23 (3) the party:

24 (A) before giving consent, is provided with a
25 statement identifying the hardware and software requirements for
26 the party's access to and retention of a written communication
27 delivered by electronic means; and

1 (B) consents electronically or confirms consent
2 electronically in a manner that reasonably demonstrates that the
3 party can access a written communication in the electronic form
4 used to deliver the communication.

5 (d) After consent of the party is given, in the event a
6 change in the hardware or software requirements to access or retain
7 a written communication delivered by electronic means creates a
8 material risk that the party may not be able to access or retain a
9 subsequent written communication to which the consent applies, the
10 insurer shall:

11 (A) provide the party with a statement:

12 (i) identifying the revised hardware and
13 software requirements for access to and retention of a written
14 communication delivered by electronic means; and

15 (ii) disclosing the right of the party to
16 withdraw consent without the imposition of any fee, condition, or
17 consequence that was not disclosed under Subsection (c)(2)(B); and

18 (B) comply with Subsection (c)(3).

19 (e) This section does not affect requirements for content or
20 timing of any required written communication.

21 (f) If a written communication provided to a party expressly
22 requires verification or acknowledgment of receipt, the written
23 communication may be delivered by electronic means only if the
24 method used provides for verification or acknowledgment of receipt.

25 (g) The legal effectiveness, validity, or enforceability of
26 any contract or policy of insurance executed by a party may not be
27 denied solely due to the failure to obtain electronic consent or

1 confirmation of consent of the party in accordance with Subsection
2 (c)(3)(B).

3 (h) A withdrawal of consent by a party does not affect the
4 legal effectiveness, validity, or enforceability of a written
5 communication delivered by electronic means to the party before the
6 withdrawal of consent is effective. A withdrawal of consent is
7 effective after the date of the receipt by the insurer of the
8 withdrawal. Failure by an insurer to comply with Subsection (d) may
9 be treated by the party as a withdrawal of consent.

10 (i) If the consent of a party to receive a written
11 communication by electronic means is on file with a regulated
12 entity before January 1, 2014, and if the entity intends to deliver
13 to the party written communications under this subchapter, then
14 before the entity may deliver by electronic means additional
15 written communications, the insurer must notify the party of:

16 (1) the written communications that may be delivered
17 by electronic means that were not previously delivered by
18 electronic means; and

19 (2) the party's right to withdraw consent to have
20 written communications delivered by electronic means.

21 (j) Except as otherwise provided by law, an oral
22 communication or a recording of an oral communication may not
23 qualify as a written communication delivered by electronic means
24 for purposes of this subchapter.

25 (k) If a signature on a written communication is required by
26 law to be notarized, acknowledged, verified, or made under oath,
27 the requirement is satisfied if the electronic signature of the

1 notary public or other authorized person and the other required
2 information are attached to or logically associated with the
3 signature or written communication.

4 (1) This section may not be construed to modify, limit, or
5 supersede the provisions of the federal Electronic Signatures in
6 Global and National Commerce Act (15 U.S.C. Section 7001 et seq.).

7 SECTION 4. This Act applies only to a written communication
8 that is delivered by electronic means on or after January 1, 2014.
9 A written communication delivered by electronic means before
10 January 1, 2014, is governed by the law as it existed immediately
11 before the effective date of this Act, and that law is continued in
12 effect for that purpose.

13 SECTION 5. This Act takes effect September 1, 2013.