

BILL ANALYSIS

C.S.H.B. 4210
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are growing calls to facilitate the use of electronic transactions, which are currently authorized for those who opt in to the use of such transactions, by business entities regulated by the Texas Department of Insurance (TDI). Under current statute, in order to transact business electronically with consumers, these entities must provide specific long-form consent documents that require a consumer to affirmatively choose to conduct business with the insurer using electronic transactions.

For a growing number of consumers as well as the insurance industry, this process, which is heavily reliant on paper delivery, is neither viable nor preferable and, as it has been noted in other matters of public policy, the COVID-19 pandemic has exacerbated the problems surrounding delayed mail delivery of these documents.

C.S.H.B. 4210 seeks to address this issue by making electronic transactions the default form of conducting business for a TDI-regulated entity but, nonetheless, providing the option for a party to request a nonelectronic form of communication in business dealings with the entity.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 4210 amends the Insurance Code to authorize a business entity regulated by the Texas Department of Insurance to conduct business electronically by default as an alternative to conducting business electronically only on the explicit agreement of each party to the business before the conduct of business. The bill establishes the following conditions for the default authorization:

- each other party to the business must have been given notice by the entity that the business will be conducted electronically; and
- each other party to the business has not requested that the business be conducted in nonelectronic form.

C.S.H.B. 4210 updates and revises the minimum standards for electronically conducting business with consumers to reflect the default electronic delivery of a written communication to a party and to clarify that the delivery is made under the following conditions:

- if affirmative consent is not sought and the party has not requested that written communication be delivered to the party in paper or another nonelectronic form instead of electronically;
- if the party, before receiving written communication by electronic means, is provided with a clear and conspicuous statement informing the party of, among other things, certain related rights, affected transactions, means of requesting a paper copy regardless of when consent is given, and procedures for requesting delivery of a written communication in a nonelectronic form; and
- if the party, before receiving written communication by electronic means, is provided with a statement regarding hardware and software requirements for access and retention purposes and, if affirmative consent is sought, the party consents electronically or confirms consent electronically in a manner reasonably demonstrating that the party can access a written communication in the electronic form used to deliver the communication.

The bill also updates the provisions in the minimum standards regarding the requisite statement identifying hardware and software requirements needed for access and retention, in the event of changes to those requirements, to specify that the statement must be provided after the opportunity to request delivery of written communication in nonelectronic form is given.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4210 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the way the original provides for the default conduct of business electronically. Rather than, as in the original, authorizing a default authorization for such conduct whereby each party must agree, before conducting business electronically, to conduct the business with written physical documents instead of conducting business electronically, the substitute instead:

- authorizes business to be conducted electronically under the following conditions, as an alternative to conducting business electronically on agreement of each party to the business:
 - each other party to the business has been given notice that the business will be conducted electronically; and
 - each other party has not requested that the business be conducted in nonelectronic form; and
- updates and revises the minimum standards for regulated entities electronically conducting business with consumers to reflect the default delivery authorization.