By:  Paul (Senate Sponsor - Hancock) H.B. No. 4210

(In the Senate - Received from the House May 12, 2021; May 14, 2021, read first time and referred to Committee on Business & Commerce; May 21, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0, one present not voting; May 21, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Johnson              X

Menéndez                             X

Paxton               X

Schwertner           X

Whitmire             X

COMMITTEE SUBSTITUTE FOR H.B. No. 4210 By:  Hancock

A BILL TO BE ENTITLED

AN ACT

relating to the authority of entities regulated by the Texas Department of Insurance to conduct business electronically.

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

SECTION 1.  Section 35.001, Insurance Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a)  "Plan sponsor" means a person, other than a regulated entity, who establishes, adopts, or maintains a health benefit plan, including a vision or dental benefit plan, that covers residents of this state, including a plan established, adopted, or maintained by an employer or jointly by an employer and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

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

Sec. 35.003.  ELECTRONIC TRANSACTIONS AUTHORIZED. (a) Subject to Section 35.004, 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:

(1)  each party to the business agrees to conduct the business electronically; or

(2)  each other party to the business has been given notice by the entity that the business will be conducted electronically and has not requested that the business be conducted in nonelectronic form.

(b)  If a regulated entity provides notice under Subsection (a)(2) and the other party does not opt out of conducting business electronically, the other party is considered to have agreed to conduct business electronically for purposes of Chapter 322, Business & Commerce Code.

SECTION 3.  Sections 35.004(c) and (d), Insurance Code, are amended to read as follows:

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

(1)  the party:

(A)  affirmatively consented to delivery by electronic means and has not withdrawn the consent; or

(B)  if affirmative consent is not sought, has not requested that written communication be delivered to the party in paper or another nonelectronic form instead of by electronic means;

(2)  the party, before giving consent or receiving written communication by electronic means, is provided with a clear and conspicuous statement informing the party of:

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

(B)  the right of the party to withdraw consent under this section or to request written communication be delivered to the party in nonelectronic form, if the party's affirmative consent is not sought, and any conditions or consequences imposed if consent is withdrawn or delivery in nonelectronic form is requested;

(C)  whether the party's consent to delivery by electronic means or the party's request or the absence of the party's request for delivery in nonelectronic form applies:

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

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

(D)  the means[~~, after consent is given,~~] by which a party may obtain a paper copy of a written communication delivered by electronic means; and

(E)  the procedure a party must follow to:

(i)  withdraw consent under this section or to otherwise request delivery of written communication in nonelectronic form, as applicable; and

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

(3)  the party:

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

(B)  if affirmative consent is sought, consents electronically or confirms consent electronically in a manner that reasonably demonstrates that the party can access a written communication in the electronic form used to deliver the communication.

(d)  After consent of the party is given or the opportunity to request delivery of written communication in nonelectronic form is given, as applicable, in the event a change in the hardware or software requirements to access or retain a written communication delivered by electronic means creates a material risk that the party may not be able to access or retain a subsequent written communication to which the consent applies, the regulated entity shall:

(1)  provide the party with a statement:

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

(B)  disclosing the right of the party to withdraw consent or to otherwise request delivery in nonelectronic form, as applicable, without the imposition of any condition or consequence that was not disclosed under Subsection (c)(2)(B); and

(2)  comply with Subsection (c)(3).

SECTION 4.  Chapter 35, Insurance Code, is amended by adding Section 35.0041 to read as follows:

Sec. 35.0041.  CONSENT TO ELECTRONIC DELIVERY BY PLAN SPONSOR. (a) The plan sponsor of a health benefit plan, including a vision or dental benefit plan, may, on behalf of a party enrolled in the plan, give the consent required by Section 35.004(c)(1).

(b)  Before consenting on behalf of a party, a plan sponsor must:

(1)  provide the party with the statements required by Sections 35.004(c)(2) and (c)(3)(A);

(2)  confirm that the party routinely uses electronic communications during the normal course of employment; and

(3)  provide the party an opportunity to opt out of delivery by electronic means.

SECTION 5.  Sections 35.003 and 35.004, Insurance Code, as amended by this Act, apply only to business conducted on or after the effective date of this Act. Business conducted before the effective date of this Act is governed by the law in effect on the date the business was conducted, and that law is continued in effect for that purpose.

SECTION 6.  Section 35.0041, Insurance Code, as added by this Act, applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2022.

SECTION 7.  This Act takes effect September 1, 2021.

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