

By: Paul

H.B. No. 4210

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the authority of entities regulated by the Texas  
3 Department of Insurance to conduct business electronically.

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

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

7 (4-a) "Plan sponsor" means a person, other than a  
8 regulated entity, who establishes, adopts, or maintains a health  
9 benefit plan, including a vision or dental benefit plan, that  
10 covers residents of this state, including a plan established,  
11 adopted, or maintained by an employer or jointly by an employer and  
12 one or more employee organizations, an association, a committee, a  
13 joint board of trustees, or any similar group of representatives  
14 who establish, adopt, or maintain a plan.

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

17 Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. Subject  
18 to Section 35.004, a [A] regulated entity may conduct business  
19 electronically to the same extent that the entity is authorized to  
20 conduct business otherwise if before the conduct of business:

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

23 (2) each other party to the business has been given  
24 notice by the entity that the business will be conducted

1 electronically and has not requested that the business be conducted  
2 in nonelectronic form.

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

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

7 (1) the party:

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9 electronic means and has not withdrawn the consent; or

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

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

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

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

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

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

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

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

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

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

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

16 (3) the party:

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

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

27 (d) After consent of the party is given or the opportunity

1 to request delivery of written communication in nonelectronic form  
2 is given, as applicable, in the event a change in the hardware or  
3 software requirements to access or retain a written communication  
4 delivered by electronic means creates a material risk that the  
5 party may not be able to access or retain a subsequent written  
6 communication to which the consent applies, the regulated entity  
7 shall:

8 (1) provide the party with a statement:

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

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

16 (2) comply with Subsection (c)(3).

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

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

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

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

27 (2) confirm that the party routinely uses electronic

1 communications during the normal course of employment; and

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

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

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

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