

## **BILL ANALYSIS**

Senate Research Center  
88R11782 CJD-F

H.B. 1040  
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Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, entities regulated by the Texas Department of Insurance have strict limits regarding how they may conduct business electronically. They must, for example, obtain the written consent of other parties before conducting business electronically, which can be difficult and cumbersome. What's more, any written communication delivered electronically must be accessible and retainable by the recipient, which can be challenging if parties have different technical requirements or lack necessary technology.

H.B. 1040 would allow regulated entities to conduct business electronically to the same extent as in-person transactions, provided all parties agree or receive notice and do not request otherwise. The bill also would establish requirements for delivering written communications electronically and for a policy cancellation or termination delivered electronically, in paper, or in another non-electronic form. This would make it easier and more convenient for businesses to conduct transactions electronically, which is becoming increasingly important in today's digital age. Accordingly, it would help these businesses save time and money, leading to increased efficiency and better customer service.

H.B. 1040 amends current law relating to the authority of entities regulated by the Texas Department of Insurance to conduct business electronically.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 35.003, Insurance Code, as follows:

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. (a) Authorizes a regulated entity, subject to Section 35.004 (Minimum Standards for Regulated Entities Electronically Conducting Business With Consumers), to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business:

(1) creates this subdivision from existing text; 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) Provides that the other party, if a regulated entity provides notice under Subsection (a)(2) and the other party does not opt out of conducting business electronically, is considered to have agreed to conduct business electronically for the purposes of Chapter 322 (Uniform Electronic Transactions Act), Business and Commerce Code.

SECTION 2. Amends Section 35.004, Insurance Code, by amending Subsections (c) and (d) and adding Subsection (l), as follows:

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

(1) the party:

(A) creates this paragraph from existing text; 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) makes no changes to this paragraph;

(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) makes no changes to this subparagraph; or

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

(D) the means, rather than the means after consent is given, by which a party is authorized to obtain a paper copy of a written communication delivered by electronic means; and

(E) the procedure a party is required to follow to:

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

(ii) makes no changes to this subparagraph; and

(3) the party:

(A) before giving consent or receiving written communication by electronic means, is provided with a certain statement; and

(B) if affirmative consent is sought, consents electronically or confirms consent electronically in a certain manner.

(d) Requires the regulated entity, 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, to take certain actions, including providing the party with a statement meeting certain criteria, including 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).

(l) Requires that a notice of the cancellation or termination of a policy to which this section applies be:

(1) a written communication; and

(2) delivered to a party by electronic means and in paper or another nonelectronic form.

SECTION 3. Amends Section 35.0041(a), Insurance Code, to make a conforming change.

SECTION 4. Makes application of Sections 35.003 and 35.004, Insurance Code, as amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2023.