

## **BILL ANALYSIS**

C.S.H.B. 1040  
By: Paul  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

With global advances in electronics, it has become commonplace and easier for businesses and consumers to conduct business electronically. However, under current statutes, in order to transact business electronically with an insured, insurers must provide specific long-form consent documents that require the insured to affirmatively choose to conduct business with the insurer using electronic transactions. C.S.H.B. 1040 seeks to address this issue by authorizing a business entity regulated by the Texas Department of Insurance to conduct business electronically by default instead of doing so only on the explicit agreement of both parties.

### **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. 1040 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. 1040 establishes that, if a regulated entity provides such notice and the other party does not opt out of conducting business electronically, the other party is considered to have agreed to conduct business electronically.

C.S.H.B. 1040 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. The bill requires a notice of cancellation or termination of an applicable insurance policy to be a written communication and delivered to the party by electronic means and in paper or another nonelectronic form.

C.S.H.B. 1040 authorizes a plan sponsor of a health benefit plan, including a vision or dental benefit plan, to give consent on behalf of a party enrolled in the plan through a written communication delivered by electronic means to a party.

C.S.H.B. 1040 applies to business conducted on or after the bill's effective date.

#### **EFFECTIVE DATE**

September 1, 2023.

#### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 1040 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision that was not in the introduced establishing that a party that is given notice from a regulated entity that business will be conducted in an electronic form and does not opt out is considered to have agreed to conduct business electronically.

The substitute includes a requirement that was not in the introduced for a notice of cancellation or termination of policy to be a written communication and delivered to a party by electronic means and in paper or another nonelectronic form.