By:  Paul (Senate Sponsor - Zaffirini) H.B. No. 1040

(In the Senate - Received from the House April 17, 2023; April 18, 2023, read first time and referred to Committee on Business & Commerce; May 12, 2023, reported favorably by the following vote: Yeas 11, Nays 0; May 12, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                 X

Birdwell             X

Campbell             X

Creighton            X

Johnson              X

Kolkhorst            X

Menéndez             X

Middleton            X

Nichols              X

Zaffirini            X

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 35.003, 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 the purposes of Chapter 322, Business & Commerce Code.

SECTION 2.  Section 35.004, Insurance Code, is amended by amending Subsections (c) and (d) and adding Subsection (l) 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(A)  affirmatively consented to delivery by electronic means and has not withdrawn the consent; or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).

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

(1)  a written communication; and

(2)  delivered to a party:

(A)  by electronic means; and

(B)  in paper or another nonelectronic form.

SECTION 3.  Section 35.0041(a), Insurance Code, is amended to read as follows:

(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 under [~~required by~~] Section 35.004(c)(1)(A) [~~35.004(c)(1)~~].

SECTION 4.  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 5.  This Act takes effect September 1, 2023.

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