

By: Paul

H.B. No. 1040

Substitute the following for H.B. No. 1040:

By: Oliverson

C.S.H.B. No. 1040

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 35.003, Insurance Code, is amended to
6 read as follows:

7 Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. (a)
8 Subject to Section 35.004, a [A] regulated entity may conduct
9 business electronically to the same extent that the entity is
10 authorized to conduct business otherwise if before the conduct of
11 business:

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

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

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

23 SECTION 2. Section 35.004, Insurance Code, is amended by
24 amending Subsections (c) and (d) and adding Subsection (1) to read

1 as follows:

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

4 (1) the party:

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6 electronic means and has not withdrawn the consent; or

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

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

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

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20 if consent is withdrawn or delivery in nonelectronic form is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

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

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

27 (ii) to identified categories of written

1 communications that may be delivered [~~by electronic means~~] during
2 the course of the relationship between the party and the regulated
3 entity;

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

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

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

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

13 (3) the party:

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

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

24 (d) After consent of the party is given or the opportunity
25 to request delivery of written communication in nonelectronic form
26 is given, as applicable, in the event a change in the hardware or
27 software requirements to access or retain a written communication

1 delivered by electronic means creates a material risk that the
2 party may not be able to access or retain a subsequent written
3 communication to which the consent applies, the regulated entity
4 shall:

5 (1) provide the party with a statement:

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

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

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

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

16 (1) a written communication; and

17 (2) delivered to a party:

18 (A) by electronic means; and

19 (B) in paper or another nonelectronic form.

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

22 (a) The plan sponsor of a health benefit plan, including a
23 vision or dental benefit plan, may, on behalf of a party enrolled in
24 the plan, give ~~[the]~~ consent under ~~[required by]~~ Section
25 35.004(c)(1)(A) ~~[35.004(c)(1)]~~.

26 SECTION 4. Sections 35.003 and 35.004, Insurance Code, as
27 amended by this Act, apply only to business conducted on or after

1 the effective date of this Act. Business conducted before the
2 effective date of this Act is governed by the law in effect on the
3 date the business was conducted, and that law is continued in effect
4 for that purpose.

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