

By: Paul

H.B. No. 1040

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. 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.

SECTION 2. Sections 35.004(c) and (d), Insurance Code, are amended 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(A) affirmatively consented to delivery by electronic means and has not withdrawn the consent; or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

1 requested that written communication be delivered to the party in  
2 paper or another nonelectronic form instead of by electronic means;

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

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

9 (B) the right of the party to withdraw consent  
10 under this section or to request written communication be delivered  
11 to the party in nonelectronic form, if the party's affirmative  
12 consent is not sought, and any conditions or consequences imposed  
13 if consent is withdrawn or delivery in nonelectronic form is  
14 requested;

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

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

20 (ii) to identified categories of written  
21 communications that may be delivered [~~by electronic means~~] during  
22 the course of the relationship between the party and the regulated  
23 entity;

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

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

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

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

6 (3) the party:

7 (A) before giving consent or receiving written  
8 communication by electronic means, is provided with a statement  
9 identifying the hardware and software requirements for the party's  
10 access to and retention of a written communication delivered by  
11 electronic means; and

12 (B) if affirmative consent is sought, consents  
13 electronically or confirms consent electronically in a manner that  
14 reasonably demonstrates that the party can access a written  
15 communication in the electronic form used to deliver the  
16 communication.

17 (d) After consent of the party is given or the opportunity  
18 to request delivery of written communication in nonelectronic form  
19 is given, as applicable, in the event a change in the hardware or  
20 software requirements to access or retain a written communication  
21 delivered by electronic means creates a material risk that the  
22 party may not be able to access or retain a subsequent written  
23 communication to which the consent applies, the regulated entity  
24 shall:

25 (1) provide the party with a statement:

26 (A) identifying the revised hardware and  
27 software requirements for access to and retention of a written

1 communication delivered by electronic means; and

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

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

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

9 (a) The plan sponsor of a health benefit plan, including a  
10 vision or dental benefit plan, may, on behalf of a party enrolled in  
11 the plan, give ~~[the]~~ consent under ~~[required by]~~ Section  
12 35.004(c)(1)(A) ~~[35.004(c)(1)]~~.

13 SECTION 4. Sections 35.003 and 35.004, Insurance Code, as  
14 amended by this Act, apply only to business conducted on or after  
15 the effective date of this Act. Business conducted before the  
16 effective date of this Act is governed by the law in effect on the  
17 date the business was conducted, and that law is continued in effect  
18 for that purpose.

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