

1-1 By: Paul (Senate Sponsor - Zaffirini) H.B. No. 1040
1-2 (In the Senate - Received from the House April 17, 2023;
1-3 April 18, 2023, read first time and referred to Committee on
1-4 Business & Commerce; May 12, 2023, reported favorably by the
1-5 following vote: Yeas 11, Nays 0; May 12, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the authority of entities regulated by the Texas
1-22 Department of Insurance to conduct business electronically.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 35.003, Insurance Code, is amended to
1-25 read as follows:

1-26 Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. (a)
1-27 Subject to Section 35.004, a [A] regulated entity may conduct
1-28 business electronically to the same extent that the entity is
1-29 authorized to conduct business otherwise if before the conduct of
1-30 business:

1-31 (1) each party to the business agrees to conduct the
1-32 business electronically; or

1-33 (2) each other party to the business has been given
1-34 notice by the entity that the business will be conducted
1-35 electronically and has not requested that the business be conducted
1-36 in nonelectronic form.

1-37 (b) If a regulated entity provides notice under Subsection
1-38 (a)(2) and the other party does not opt out of conducting business
1-39 electronically, the other party is considered to have agreed to
1-40 conduct business electronically for the purposes of Chapter 322,
1-41 Business & Commerce Code.

1-42 SECTION 2. Section 35.004, Insurance Code, is amended by
1-43 amending Subsections (c) and (d) and adding Subsection (l) to read
1-44 as follows:

1-45 (c) A written communication may be delivered by electronic
1-46 means to a party by a regulated entity under this section if:

1-47 (1) the party:

1-48 (A) affirmatively consented to delivery by
1-49 electronic means and has not withdrawn the consent; or

1-50 (B) if affirmative consent is not sought, has not
1-51 requested that written communication be delivered to the party in
1-52 paper or another nonelectronic form instead of by electronic means;

1-53 (2) the party, before giving consent or receiving
1-54 written communication by electronic means, is provided with a clear
1-55 and conspicuous statement informing the party of:

1-56 (A) any right or option the party may have for the
1-57 written communication to be provided or made available in paper or
1-58 another nonelectronic form;

1-59 (B) the right of the party to withdraw consent
1-60 under this section or to request written communication be delivered
1-61 to the party in nonelectronic form, if the party's affirmative
1-62 consent is not sought, and any conditions or consequences imposed

2-1 if consent is withdrawn or delivery in nonelectronic form is
2-2 requested;

2-3 (C) whether the party's consent to delivery by
2-4 electronic means or the party's request or the absence of the
2-5 party's request for delivery in nonelectronic form applies:

2-6 (i) only to a specific transaction for
2-7 which the written communication must be given; or

2-8 (ii) to identified categories of written
2-9 communications that may be delivered [~~by electronic means~~] during
2-10 the course of the relationship between the party and the regulated
2-11 entity;

2-12 (D) the means[~~, after consent is given,~~] by which
2-13 a party may obtain a paper copy of a written communication delivered
2-14 by electronic means; and

2-15 (E) the procedure a party must follow to:

2-16 (i) withdraw consent under this section or
2-17 to otherwise request delivery of written communication in
2-18 nonelectronic form, as applicable; and

2-19 (ii) update information needed for the
2-20 regulated entity to contact the party electronically; and

2-21 (3) the party:

2-22 (A) before giving consent or receiving written
2-23 communication by electronic means, is provided with a statement
2-24 identifying the hardware and software requirements for the party's
2-25 access to and retention of a written communication delivered by
2-26 electronic means; and

2-27 (B) if affirmative consent is sought, consents
2-28 electronically or confirms consent electronically in a manner that
2-29 reasonably demonstrates that the party can access a written
2-30 communication in the electronic form used to deliver the
2-31 communication.

2-32 (d) After consent of the party is given or the opportunity
2-33 to request delivery of written communication in nonelectronic form
2-34 is given, as applicable, in the event a change in the hardware or
2-35 software requirements to access or retain a written communication
2-36 delivered by electronic means creates a material risk that the
2-37 party may not be able to access or retain a subsequent written
2-38 communication to which the consent applies, the regulated entity
2-39 shall:

2-40 (1) provide the party with a statement:

2-41 (A) identifying the revised hardware and
2-42 software requirements for access to and retention of a written
2-43 communication delivered by electronic means; and

2-44 (B) disclosing the right of the party to withdraw
2-45 consent or to otherwise request delivery in nonelectronic form, as
2-46 applicable, without the imposition of any condition or consequence
2-47 that was not disclosed under Subsection (c)(2)(B); and

2-48 (2) comply with Subsection (c)(3).

2-49 (1) A notice of the cancellation or termination of a policy
2-50 to which this section applies must be:

2-51 (1) a written communication; and

2-52 (2) delivered to a party:

2-53 (A) by electronic means; and

2-54 (B) in paper or another nonelectronic form.

2-55 SECTION 3. Section 35.0041(a), Insurance Code, is amended
2-56 to read as follows:

2-57 (a) The plan sponsor of a health benefit plan, including a
2-58 vision or dental benefit plan, may, on behalf of a party enrolled in
2-59 the plan, give ~~the~~ consent under [~~required by~~] Section
2-60 35.004(c)(1)(A) [35.004(c)(1)].

2-61 SECTION 4. Sections 35.003 and 35.004, Insurance Code, as
2-62 amended by this Act, apply only to business conducted on or after
2-63 the effective date of this Act. Business conducted before the
2-64 effective date of this Act is governed by the law in effect on the
2-65 date the business was conducted, and that law is continued in effect
2-66 for that purpose.

2-67 SECTION 5. This Act takes effect September 1, 2023.

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