

## **BILL ANALYSIS**

Senate Research Center  
87R26968 MWC-D

C.S.H.B. 4210  
By: Paul (Hancock)  
Business & Commerce  
5/21/2021  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, an insurance company may only conduct business electronically after getting affirmative consent from the consumer.

H.B. 4210 allows insurance companies to deliver documents electronically without affirmative consent if the consumer was given a chance to "opt out."

The bill requires the insurer to give notice to the consumer that they will default to electronic communication. The consumer must be given a chance to request nonelectronic communication.

House floor amendment by Lucio—allows employers known as "plan sponsors" of a health benefit plan the authority to opt in all employees to electronic delivery by default.

H.B. 2276 is the stand alone bill—it was voted out of the House Committee on Insurance but never heard on the house floor.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 4210 amends current law relating to the authority of entities regulated by the Texas Department of Insurance to conduct business electronically.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 35.001, Insurance Code, by adding Subdivision (4-a) to define "plan sponsor" for purposes of Chapter 35 (Electronic Transactions).

SECTION 2. Amends Section 35.003, Insurance Code, as follows:

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. (a) Creates this subsection from existing text. Authorizes a regulated entity, subject to Section 35.004 (Minimum Standards for Regulated Entities Electronically Conducting Business with Consumers), to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business:

(1) creates this subdivision from existing text and makes nonsubstantive changes; 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) Provides that 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 purposes of Chapter 322 (Uniform Electronic Transactions Act), Business & Commerce Code.

SECTION 3. Amends Sections 35.004(c) and (d), Insurance Code, as follows:

(c) Authorizes a written communication to be delivered by electronic means to a party by a regulated entity under Section 35.004 if:

(1) the party:

(A) creates this paragraph from existing text and makes a nonsubstantive change; 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) makes no changes to this paragraph;

(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 to certain communications;

(D) the means, rather than the means after consent is given, by which a party is authorized to obtain a paper copy of a written communication delivered by electronic means; and

(E) the procedure a party is required to follow to:

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

(ii) makes no changes to this subparagraph; 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) Requires the regulated entity, 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 is prohibited from being able to access or retain a subsequent written communication to which the consent applies, to:

(1) provide the party with a statement:

(A) makes no changes to this paragraph; 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) makes no changes to this subdivision.

SECTION 4. Amends Chapter 35, Insurance Code, by adding Section 35.0041, as follows:

Sec. 35.0041. CONSENT TO ELECTRONIC DELIVERY BY PLAN SPONSOR. (a) Authorizes the plan sponsor of a health benefit plan, including a vision or dental benefit plan, on behalf of a party enrolled in the plan, to give the consent required by Section 35.004(c)(1).

(b) Requires a plan sponsor, before consenting on behalf of a party, to:

(1) provide the party with the statements required by Sections 35.004(c)(2) and (c)(3)(A);

(2) confirm that the party routinely uses electronic communications during the normal course of employment; and

(3) provide the party an opportunity to opt out of delivery by electronic means.

SECTION 5. Makes application of Sections 35.003 and 35.004, Insurance Code, as amended by this Act, prospective.

SECTION 6. Provides that Section 35.0041, Insurance Code, as added by this Act, applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2022.

SECTION 7. Effective date: September 1, 2021.