

INSURANCE CODE

TITLE 2. TEXAS DEPARTMENT OF INSURANCE

SUBTITLE A. ADMINISTRATION OF THE TEXAS DEPARTMENT OF INSURANCE

CHAPTER 35. ELECTRONIC TRANSACTIONS

Sec. 35.001. DEFINITIONS. In this chapter:

(1) "Conduct business" includes engaging in or transacting any business in which a regulated entity is authorized to engage or is authorized to transact under the law of this state.

(2) "Regulated entity" means each insurer, organization, person, or program regulated by the department, including:

(A) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a domestic or foreign title insurance company;

(H) a stipulated premium company;

(I) a nonprofit legal service corporation;

(J) a health maintenance organization;

(K) a statewide mutual assessment company;

(L) a local mutual aid association;

(M) a local mutual burial association;

(N) an association exempt under Section [887.102](#);

(O) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter [842](#);

(P) a county mutual insurance company;

(Q) a farm mutual insurance company; and

(R) an agency or agent of an insurer, organization, person, or program described by this subdivision.

(3) "Deliver by electronic means" means:

(A) deliver to an e-mail address at which a party has consented to receive notices, documents, or information; or

(B) post on an electronic network or Internet website accessible by an electronic device, including a computer, mobile device, or tablet, and deliver notice of the posting to an e-mail address at which the party has consented to receive notices.

(4) "Party" means a recipient, including an applicant, insured, policyholder, enrollee, or annuity contract holder, of a notice or document or of information required as part of an insurance transaction.

(4-a) "Plan sponsor" means a person, other than a regulated entity, who establishes, adopts, or maintains a health benefit plan, including a vision or dental benefit plan, that covers residents of this state, including a plan established, adopted, or maintained by an employer or jointly by an employer and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

(5) "Written communication" means a notice or document or other information provided in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. [1951](#)), Sec. 6.001, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. [1074](#)), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. [2065](#)), Sec. 5.001, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 976 (S.B. [2124](#)), Sec. 1, eff. September 1, 2021.

Sec. 35.002. CONSTRUCTION WITH OTHER LAW.

(a) Notwithstanding any other provision of this code, a regulated entity may conduct business electronically in accordance with this chapter and the rules adopted under Section [35.004](#).

(b) To the extent of any conflict between another provision of this code and a provision of this chapter, the provision of this

chapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED.

(a) Subject to Section 35.004, 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 309 (H.B. 1040), Sec. 1, eff. September 1, 2023.

Sec. 35.004. MINIMUM STANDARDS FOR REGULATED ENTITIES ELECTRONICALLY CONDUCTING BUSINESS WITH CONSUMERS. (a) Subject to Subsection (c), a notice to a party or other written communication with a party required in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means only if the delivery, storage, or presentment complies with Chapter 322, Business & Commerce Code.

(b) Delivery of a written communication in compliance with this section is equivalent to any delivery method required by law, including delivery by first class mail, first class mail, postage

prepaid, or certified mail.

(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 during the course of the relationship between the party and the regulated entity;

(D) the means 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).

(e) This section does not affect requirements for content or timing of any required written communication.

(f) If a written communication provided to a party expressly requires verification or acknowledgment of receipt, the written communication may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely due to the failure to obtain electronic consent or

confirmation of consent of the party in accordance with Subsection (c)(3)(B).

(h) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a written communication delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent is effective within a reasonable period of time after the date of the receipt by the regulated entity of the withdrawal. Failure by a regulated entity to comply with Subsection (d) may be treated by the party as a withdrawal of consent.

(i) If the consent of a party to receive a written communication by electronic means is on file with a regulated entity before September 1, 2013, and if the entity intends to deliver to the party written communications under this section, then before the entity may deliver by electronic means additional written communications, the entity must notify the party of:

(1) the written communications that may be delivered by electronic means that were not previously delivered by electronic means; and

(2) the party's right to withdraw consent to have written communications delivered by electronic means.

(j) Except as otherwise provided by law, an oral communication or a recording of an oral communication may not qualify as a written communication delivered by electronic means for purposes of this chapter.

(k) If a signature on a written communication is required by law to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the notary public or other authorized person and the other required information are attached to or logically associated with the signature or written communication.

(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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 309 (H.B. 1040), Sec. 2, eff. September 1, 2023.

Sec. 35.0041. CONSENT TO ELECTRONIC DELIVERY BY PLAN SPONSOR. (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 consent under Section 35.004(c)(1)(A).

(b) Before consenting on behalf of a party, a plan sponsor must:

(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.

Added by Acts 2021, 87th Leg., R.S., Ch. 976 (S.B. 2124), Sec. 2, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 309 (H.B. 1040), Sec. 3, eff. September 1, 2023.

Sec. 35.0045. RULES. The commissioner shall adopt rules necessary to implement and enforce this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 2, eff. September 1, 2013.

Sec. 35.005. EXEMPTION FROM CERTAIN FEDERAL LAWS. This chapter modifies, limits, or supersedes the provisions of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

Added by Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 3,

eff. September 1, 2013.