

SUBCHAPTER L. ELECTRONIC TRANSACTIONS
28 TAC §§1.1301 – 1.1306

1. INTRODUCTION. The Texas Department of Insurance, in compliance with Insurance Code Chapter 35, proposes new 28 TAC Subchapter L, §§1.1301 – 1.1306, establishing the minimum standards with which a regulated entity must comply in conducting business electronically with other regulated entities and consumers. These new sections implement Insurance Code Chapter 35, §§35.001 – 35.004, which were added by House Bill 1951, 82nd Legislature, Regular Session, effective September 1, 2011.

Section 1.1301 states the purpose of the new subchapter, which is to set minimum standards for a regulated entity that wants to conduct business electronically with other regulated entities and with consumers.

Section 1.1302 defines two terms used throughout the new subchapter, “regulated entity” and “doing business electronically.” Insurance Code §35.001 defines “regulated entity” to mean “each insurer or other organization regulated by the department.” The definition in the statute does not make clear that agencies and individual agents, also regulated by the department, are permitted to do business electronically as permitted by the statute. To make clear that they are included in the entities permitted to do business electronically, this subchapter defines “regulated entity” to include an agency and any agent of an insurer or other organization listed in Insurance Code §35.001.

Section 1.1303 reiterates the statutory requirement under which a regulated entity may conduct business electronically, which is that a regulated entity may only conduct business electronically if before doing so each party to the business agrees to conduct the business electronically.

Section 1.1304 prescribes the minimum conditions with which a regulated entity must comply in conducting business electronically with other businesses and consumers. The section requires that a regulated entity comply with the Texas Uniform Electronic Protections Act and with all applicable privacy laws.

Section 1.1305 prescribes the minimum conditions with which a regulated entity must comply in conducting business electronically with consumers. The section establishes five additional minimum standards, and identifies when the department may take action for an insurer's failure to comply with these standards and the requirements of Insurance Code Chapter 551.

The first standard requires that a regulated entity give a consumer the option to continue receiving notices and other communications by hard copy if the Insurance Code or department regulation requires they be provided by hard copy. The second standard requires a regulated entity to ensure consumers understand and agree to receive electronic notices of termination, cancellation, nonrenewal, increased premiums, or other significant negative notices from the regulated entity. The third standard requires that whenever a regulated entity sends a consumer an electronic notice that is required by the department to be delivered or mailed, the notice must include an option to allow the consumer to revoke its consent to receiving these notices electronically.

The fourth standard is that a regulated entity must retain a copy of a consumer's agreement to do business electronically for as long as the regulated entity intends to rely on that agreement. The fifth standard is that a consumer who has done business with a regulated entity may refuse to continue to do business electronically.

Section 1.1305 also explains that the cancellation or nonrenewal of an insurance policy subject to Insurance Code Chapter 551 has no effect if in violation of the requirements of this subchapter.

Section 1.1306 addresses a potential conflict between Subchapter L and other department regulations. It reiterates the statute's preemption provision that, should there be a conflict between a provision of the new subchapter and other regulations adopted by the department, the provision of the new subchapter controls to the extent necessary for compliance with Insurance Code Chapter 35.

2. FISCAL NOTE. Mr. Stanton Strickland, associate commissioner, Legal Section, has determined that for each of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Strickland has also determined that for each of the first five years the proposed new sections are in effect, several public benefits are anticipated as a result of compliance with this proposal. The department anticipates

there will be no cost for compliance to persons or regulated entities choosing to conduct business electronically.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. In accord with the Government Code §2006.002(c), the department has determined that this proposed subchapter will not have an adverse economic effect on small or micro business carriers because it does not require any conduct that will cause expense to a regulated entity. In accord with the Government Code §2006.002, the department is not required to prepare a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, so, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on January 7, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Stanton Strickland, Associate

Commissioner, Legal Section, Mail Code 110-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

7. STATUTORY AUTHORITY. The department proposes the sections pursuant to Insurance Code §§35.004, 36.001, and 551.111. Section 35.004 provides that the commissioner will adopt rules necessary to implement and enforce Insurance Code Chapter 35, and that the rules adopted by the commissioner must include rules that establish minimum standards with which a regulated entity must comply in the entity's electronic conduct of business with other regulated entities and consumers. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state. Section 551.111 provides that a cancellation of an insurance policy made in violation of Insurance Code Chapter 551 has no effect.

8. CROSS REFERENCE TO STATUTE. The proposal affects the following statutes:

<u>Rule</u>	<u>Statute</u>
§1.1301	Insurance Code §35.004
§1.1302	Insurance Code §35.001

§1.1303	Insurance Code §35.003
§1.1304	Insurance Code §35.003 and §35.004, Business and Commerce Code Ch. 322
§1.1305	Insurance Code §§35.003, 35.004, and 551.111; Business and Commerce Code Ch. 322
§1.1306	Insurance Code §35.002

9. TEXT.

SUBCHAPTER L. Electronic Transactions
28 TAC §§1.1301 – 1.1305

§1.1301. Purpose. This subchapter implements Chapter 35 of the Insurance Code by setting minimum standards for regulated entities doing business electronically with other regulated entities and consumers.

§1.1302. Definitions. The following words and terms, when used in this subchapter, have the following meanings:

(1) Regulated entity--Each insurer or other organization 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) an attorney's title insurance company;
- (I) a stipulated premium company;
- (J) a nonprofit legal service corporation;
- (K) a health maintenance organization;
- (L) a statewide mutual assessment company;
- (M) a local mutual aid association;
- (N) a local mutual burial association;
- (O) an association exempt under Insurance Code §887.102;
- (P) a nonprofit hospital, medical, or dental service corporation, including a company subject to Insurance Code Chapter 842;
- (Q) a county mutual insurance company;
- (R) a farm mutual insurance company; and
- (S) an agency and any agent of an insurer or other organization listed in this paragraph.
- (2) Doing business electronically--To do business over the internet, by email or by other electronic means.

§1.1303. Electronic Transactions Allowed. A regulated entity may do business electronically in the same manner it is otherwise allowed to do business if, before doing business, each party to the business agrees to do business electronically.

§1.1304. Minimum Standards for Regulated Entities Doing Business Electronically.

(a) A regulated entity doing business electronically must comply with the requirements of the Texas Uniform Electronics Transactions Act, Business and Commerce Code Chapter 322.

(b) Electronic transactions must comply with the privacy requirements of all applicable laws, including:

(1) the Gramm-Leach-Bliley Act of 1999 15 U.S.C. §§6801 – 6810;

(2) the Health Insurance Portability and Accountability Act of 1996 Pub. L. No. 104-191 110 Stat. 1936 (1996); and

(3) any other applicable state or federal law.

§1.1305. Additional Minimum Standards for Regulated Entities Doing Business

Electronically with Consumers. A regulated entity doing business electronically with a consumer must comply with the following minimum standards:

(1) A regulated entity must give a consumer the option to receive by non-electronic mail any notice or other communication required by the Insurance Code or a department regulation to be delivered by mail.

(2) The option required by paragraph (1) of this section must conspicuously include language to allow the consumer to indicate their understanding and agreement to receive electronically any notice of termination, cancellation, nonrenewal, increased payments, or other significant negative notice from the regulated entity.

(3) After having received a consumer's agreement to do business electronically, any electronic notice sent by a regulated entity that the department requires to be delivered or mailed must include an option to allow the consumer to revoke its consent to receive such notices electronically.

(4) A regulated entity must keep a copy of a consumer's agreement to do business electronically in its records of its business with the consumer for as long as the regulated entity intends to rely on that agreement.

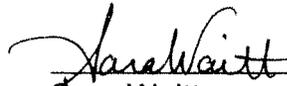
(5) A consumer who has done business electronically with a regulated entity may refuse to continue to do business with the regulated entity by electronic means.

(6) The cancellation or nonrenewal of an insurance policy subject to Insurance Code Chapter 551 if in violation of this subchapter has no effect.

§1.1306. Conflict with Other Rules. If there is any conflict between other regulations adopted by the department and this subchapter, this subchapter controls to the extent necessary for compliance with Insurance Code Chapter 35.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on November 26, 2012.



Sara Waitt
General Counsel
Texas Department of Insurance