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March 23, 2023

Director Judith L. French and Commissioner Troy Downing
Co-Chairs, NAIC E-Commerce (H) Working Group
Via email to Miguel Romero (maromero@naic.org) and Casey McGraw (cmcgraw@naic.org)

Re: NAIC E-Commerce (H) Working Group's E-Commerce Framework

Dear Director French and Commissioner Downing:

The American Council of Life Insurers (ACLI)¹ appreciates the chance to provide feedback to the E-Commerce (H) Working Group on its E-Commerce Framework. We would welcome the opportunity to discuss our feedback in-person and in greater detail at a Working Group meeting soon. In addition to providing feedback on the Framework, we volunteer to be a resource in the Working Group's efforts to complete their charge to examine e-commerce laws and regulations and work toward meaningful, unified recommendations. Please let us know how we can be of assistance.

Prioritizing E-Commerce Modernization

Modernizing e-commerce laws and regulations is a priority for ACLI members because of the benefits to American consumers, who are increasingly comfortable with digital engagement. About 80 percent of the population shops online.² And over 56 percent of consumers now prefer online shopping over in-store shopping.³ The trend towards online shopping applies to life insurance as well. Respondents to the 2022 Insurance Barometer Study⁴ indicate a large shift favoring online life insurance shopping and purchasing. This is due to advances in technology, as well as the pandemic. Preference for shopping online increased 29 percent over the last six years. This increase suggests that insurance customers expect or will come to expect the same speed, convenience, access, security, and digital communication they enjoy when shopping online from other types of companies.

¹ The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

² <https://fitsmallbusiness.com/online-shopping-statistics/#:~:text=According%20to%20Statista%20figures%2C%20more,to%20291.2%20million%20by%202025>

³ <https://www.raydiant.com/blog/state-of-consumer-behavior-2022>

⁴ https://portal.equitable.com/appentry/EDoxRedirect?node_id=A2020082700016

However, the insurance industry lags behind other industry sectors when it comes to technology adoption.⁵ Moreover, according to the DXC Insurance Consumer Survey Report, 57 percent of consumers ages 18-44 believe their carrier needs to improve the user experience online.⁶ While the insurance industry has a role to play in improving consumers' online experiences, modernizing the regulatory scheme governing e-commerce is necessary for improvement.

While the E-Commerce Framework rightly lists amending existing state laws and regulations as a possible complication to industry requests to modernize e-commerce, this hurdle should not stall progress. In general, e-commerce is cheaper, faster, and better for the environment than paper communications and transactions. Though the current default for insurance communications is paper, it's time to shift that paradigm. The world is not reverting to paper communications; technology is advancing; and it's imperative that the insurance industry keep pace to meet the growing need for insurance. Blending U.S. population data with the 2022 Insurance Barometer Study results suggests the total life insurance need-gap encompasses 106 million adults, a rise of 4 percent from 2021. But by modernizing and expanding e-commerce, the insurance industry can increase access to important financial security tools thereby helping consumers overcome debt, create generational wealth, retire comfortably, and finance future needs such as education.

The ACLI respectfully requests that the NAIC prioritize e-commerce modernization work. The NAIC's 2023 priorities include innovation and states, "NAIC members are committed to empowering responsible and pro-consumer innovation in the insurance sector. By updating model laws, engaging with interested parties domestically and internationally, and creating new frameworks and guidance regarding insurers' responsible data/artificial intelligence (AI) use and cybersecurity response, the NAIC will ensure regulation not only keeps pace with but stays ahead of emerging technologies and associated privacy concerns."⁷ We applaud this goal and see e-commerce modernization as pro-consumer innovation as well as vital to an effort to stay ahead of emerging technologies.

Consumer Choice and Consumer Accommodations are Paramount

Consumer choice is paramount. The ACLI believes that e-delivery should be the default standard and consumers should always retain the option to receive paper communications. While paper might be preferred by a consumer without internet access, electronic notices might be desired by consumers who move frequently, who are environmentally conscious, who are visually impaired, or who need translation technology, among other reasons. E-Commerce laws are and should remain consumer centric. ACLI members support e-commerce laws and regulations that provide and even improve upon the benefits and protections afforded consumers in non-electronic transactions. For example, by adding alerts after a digital transaction (e.g., "if this wasn't a change you made, contact us"), security could be as good or even better than the same transactions conducted via paper through the United States Postal Service. E-notices can also help consumers understand disclosures and make decisions. E-notices can be layered, with a short and simple

⁵ <https://www.forbes.com/sites/garydrenik/2020/10/15/digital-insurance-has-been-lagging-behind-other-digital-industries-covid-19-consumers-are-giving-it-a-shot-in-the-arm/?sh=1b0583e45605>

⁶ <https://dxc.com/content/dam/dxc/projects/dxc-com/us/pdfs/industries/insurance/2020%20DXC%20Insurance%20survey%20report%20The%20voice%20of%20the%20U.S.%20consumer.pdf>

⁷ <https://content.naic.org/article/naic-announces-2023-regulatory-priorities>

notice on top, and a click-through option to more detailed disclosures when the participant wants additional information. This layering means that the top layer of information is simpler and easier to read than a paper document. E-notices can also provide “just-in-time” information via embedded links to help the consumer compare options and make decisions.⁸

E-Commerce Standards and Guidance

Most laws and regulations that accommodate electronic communications were adopted piecemeal over time and as an exception to the paper default. By modernizing and harmonizing these conflicting standards, the NAIC will give states a guidepost with which to align a disjointed framework. We encourage the Working Group not to become bogged down by determining how to untangle the plethora of conflicting laws governing e-commerce across the states. By setting the standard and providing guidance, progress will be made. The key is to begin now so that the insurance industry does not fall further behind in technology adoption.

The ACLI has previously suggested that the NAIC develop an E-Commerce Handbook or other form of guidance to improve consistency across the states. A Handbook would help unify and simplify e-commerce regulations, provide background, assist in interpreting the interplay of federal and state e-commerce laws, and make recommendations. The ACLI previously provided the Working Group a draft chapter for the proposed E-Commerce Handbook, as well as an outline for additional chapters. We invite the Working Group to revisit this suggestion and would be happy to assist in the development of the Handbook. The NAIC’s State Licensing Handbook has been a useful resource and we believe that an E-Commerce Handbook would prove just as useful.

Pandemic Accommodations: Temporary to Permanent

The introduction to the E-Commerce Framework states, “In 2021, the E-Commerce (H) Working Group sent a survey to the states asking what exceptions to state laws or regulations were implemented during the pandemic that allowed electronic commerce, electronic transactions, and electronic communications to take place when in-person methods were not possible.” The survey also asked whether “any of these exceptions had expired, had been rescinded, or were made permanent either by legislation or through department action.” However, the Framework does not reveal the results of that portion of the survey. Temporary accommodations, such as remote online notarization or remote third-party administrator audits, that were successfully implemented and utilized by consumers, should continue. We applaud the states that have already taken steps to make temporary accommodations, such as electronic notarization, permissible post-pandemic. Those accommodations that proved to be problematic should be analyzed to determine why and how they can be improved. We respectfully ask that the Working Group identify the successful accommodations states made during the pandemic and encourage their permanent adoption.

Temporary accommodations that could be made permanent may include:

- waiving hard copy, original signature, and related filing requirements to allow for e-delivery of company filings,
- allowing e-signatures for company filings,
- allowing remote examinations,

⁸ <https://www.asppa.org/news-resources/browse-topics/top-five-reasons-favor-electronic-disclosure>

- allowing continuing education requirements to be completed online, and
- using and accepting electronic signatures and records to facilitate transactions, while maintaining proof of consent from the policyholder.

In 2020, the ACLI provided the Working Group with a sample Model Bulletin that could be used to accommodate these specific changes. As part of its charge, the Working Group is directed to examine whether a model bulletin would be appropriate. While we believe e-commerce modernization extends beyond “temp to perm” efforts, we think these efforts are a great starting place and ask that the Working Group consider adopting a Model Bulletin addressing this topic.

Prioritizing the Framework

It is important to remember the primary purposes of e-commerce regulation, which include preventing fraud and promoting efficiency. Solutions proposed in the Framework should have a clear purpose to avoid further complicating e-commerce for consumers, regulators, and industry alike.

The Framework covers a wide range of topics but does not prioritize them. Without prioritization, it’s difficult to know where to start. In addition to pursuing the permanent adoption of successful temporary pandemic accommodations, the ACLI strongly recommends that the Working Group prioritize e-consent and e-delivery in their upcoming work. We recommend prioritizing these concepts because:

- These two concepts are intertwined and can be viewed as the foundation for all other e-commerce issues.
- By defining exactly which electronic engagements merit e-consent, and at which points in the insurance lifecycle e-consent must be obtained, it will be easier to establish one, uniform e-consent requirement applicable to all jurisdictions and product lines.
- One, uniform consent requirement will:
 - make it easier for regulators to quickly determine whether carriers are in compliance,
 - eliminate confusing and conflicting requirements to make it easier for carriers to ensure compliance, and
 - ensure consumers can readily identify the e-consent form at the right intervals/events, thereby helping to prevent fraud.

We believe that once e-consent is clarified with unified requirements, e-delivery will be more readily and widely accepted by consumers, adopted by the states, and implemented by insurance companies. E-delivery should be accepted as the norm and made the default delivery mechanism, with the option for consumers to select paper delivery if they prefer.

Specific Comments on the Framework

In addition to our recommendation to prioritize the topics included in the Framework, we include a few specific thoughts on the various sections of the Framework below:

(1) e-signature

- We continue to urge regulators to make e-signatures (and e-delivery) the default.

- The Framework refers to limiting e-signature consent to a single transaction. This would be a regression from current consent requirements, decrease efficiency, and do nothing to advance fraud prevention.
- We encourage the Framework's proposed solution to issue a bulletin accepting remote online notarization as a valid form of notarization.

(2) e-notices

- The current "paper default model" was implemented decades ago, when technology was far less advanced and much less incorporated into consumers' daily lives. Not only would switching to an "e-notice default model" better align with technological advancement; it could also provide stronger protections for consumers. For instance, with proper controls, it is much harder to alter an e-document that has been e-signed after signature, as there are typically audit logs registering every change, certificates of completion, or similar processes and controls in place. As a result, if someone alters a document after e-signature, it is detectable. Conversely, if a paper document is altered after wet signature, there may not be evidence to prove when the document was altered and whether the signer agreed to the alteration.
- The Framework suggests a possible solution to concerns with e-delivery is to differentiate insurers as either e-insurers or paper insurers. The Framework does not elaborate on this point so it's difficult to interpret what is meant by this suggestion. Based on what we can understand, we advise against it. All insurers must meet consumer demand and have the capability to deliver notices both via paper and digital means.
- The ACLI supports the possible solution posed in this section of the Framework pertaining to developing a bulletin, regulation, or statute that would allow for e-delivery any time a communication must be sent. An E-Commerce Handbook would also be useful guidance.
- Again, we wish to stress the importance of clear and consistent e-consent and e-delivery requirements across the states. Despite the concerns and possible complications indicated in the Framework, guidance on these foundational e-commerce issues would point states towards modernization and harmonization.

(3) policy issues

- We support the proposed solution to encourage the uniform adoption of NAIC model regulations to improve the existing inconsistencies in the states' policy requirements. A plan to encourage adoption should be developed and implemented. Impediments to adoption should be addressed.
- The proposed solution to the problem of varying filing requirements for enrollment forms, particularly in employer group policies, does not seem to address the issue.
- Most of the topics in this section do not indicate any concerns with industry requests. Where there are no concerns, we encourage the NAIC to recommend that states consider loosening restrictions around those topics. For example, no concerns were raised about the industry request to rescind requirements to deliver replacement notices in paper form for life and annuity sales. This issue should be flagged to the states as a potential area to advance e-commerce.

(4) claims

- The claims section of the Framework primarily focuses on P&C insurance issues. We do, however, strongly support the proposed solution of allowing online licensing courses, allowing fingerprints to be used in multiple jurisdictions for a set period, and providing additional licensing options. These advancements would support the important diversity, equity, and inclusion initiatives of the NAIC, the ACLI, and many life insurers.

(5) general “other” category

- The ACLI supports the Framework’s possible solution for addressing different design element requirements for forms/documents and online materials. The Framework states, “NAIC should work with states to seek uniform standards; standards would allow companies to follow well-defined rules and departments to enforce violations.” We also reiterate the Framework’s warning to avoid duplicating the efforts of other NAIC workstreams. And we encourage the Working Group to avoid veering too far from the core issues hindering e-commerce modernization.
- We recommend that the Working Group set a timeframe for next steps to maintain momentum and to keep all stakeholders engaged. As previously stated, we would also welcome the opportunity to discuss the Framework in real time, either in-person or virtually.

Presentation on the “Insurance Lifecycle”

We propose that the ACLI give a presentation to the Working Group at an upcoming meeting. We believe there would be value in demonstrating day-to-day insurance company operations and consumer interactions. Our presentation would show the “insurance lifecycle,” while comparing paper vs. digital engagement for the major touch points within that lifecycle. For example, we could discuss digital vs. paper interactions in relation to agent/broker licensing and appointment, the marketing of insurance, enrollments and applications, amendments to policies, policy delivery, claims administration, and policy termination or cancellation. We hope to foster a productive dialogue about the technologies and controls that make digital engagement just as good, if not better than paper communications.

Attachments

To assist the Working Group, we’re attaching some of the ACLI’s past recommendations and sample work product to this letter. We hope that compiling this work is useful to the Working Group in determining next steps.

Attachments:

- Attachment A: ACLI’s January 24, 2022 response to the NAIC’s E-Commerce Business Impact Survey
- Attachment B: ACLI’s April 4, 2021 response to the request of the Innovation and Technology (EX) Task Force for comments relating to specific laws, regulations, or regulatory guidance that impede the use of e-commerce
- Attachment C: 2020 Draft Bulletin Electronic Transactions & Communications Draft Bulletin

- Attachment D: Draft E-Commerce Handbook Chapter with suggestions for other chapters completed in November 2021

Conclusion

The ACLI is grateful to the Working Group for considering these comments. We value opportunities to work together to improve the lives of the 90 million American families who rely on the life insurance industry for financial protection and retirement security.

Sincerely,

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Gabrielle Griffith

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January 24, 2022

Commissioner Kathleen Berrane
Chair, NAIC E-Commerce (H) Working Group
Maryland Insurance Administration

Via-email with copy to Denise Matthews (dmatthews@naic.org) and Casey McGraw (cmcgraw@naic.org)

Re: NAIC E-Commerce (H) Working Group Business Impact Survey

Dear Commissioner Berrane:

The American Council of Life Insurers (ACLI) appreciates the opportunity to submit these comments in response to the request of the NAIC E-Commerce (H) Working Group for comments on its E-Commerce Business Impact survey. The points below and responses attached are intended as observations that will help inform the Working Group as they continue to meet its charges.

As life insurers, we are constantly seeking ways to increase consumer access to life insurance and lifetime income products as well as providing high quality customer service to our existing customers for managing their products. For a consumer centric experience, we need to have the ability to communicate with consumers in the manners that they are used to communicating in other aspects of their daily lives, and we need to be able to offer convenient sales experiences like they are used to in shopping for other products.

While we hope the survey produces the information regulators need to make necessary changes to current and specific e-commerce constructs, the ACLI still believes that e-commerce a broad and cumbersome issue and would benefit from guidance for both regulators and industry regarding the use of the key components of e-commerce so that we can continue to provide services to new and existing consumers the way they want to be served.

Thank you again for the opportunity to submit these comments. ACLI and its members look forward to working with E-Commerce (H) Working Group to meet its charges.

Sincerely,

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SURVEY 3: Business Impact Survey

(A) Identify specific (i) technologies; (ii) electronic communications; (iii) electronic transactions; or (iv) forms and methods of electronic commerce that are prohibited or impeded by the statutes, regulations, interpretations or practice of specific insuring jurisdiction(s).

Please use the template below. The more specific you are both with respect to concrete examples of specific applications that you are unable to utilize in a regulated environment and what those impediments actually are, the more useful. This includes examples from specific jurisdictions. It also includes regulatory hesitancy because compliance teams or uncertain. And it includes technologies and applications that are not used because of the desire for consistency across jurisdictions.

Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
Electronic Notices	Lapse/termination notices	Statutory requirements for 1 st class mail	Set electronic communications to equal 1 st class mail	Consumer must still consent to the receive communications electronically.
Consent	Consent to do business electronically	Requires affirmative opt -in to receive which does not allow for auto enrollment.	Allow for an opt-out for the consumer	The consumer maintains the control regarding whether to conduct business electronically or not
Operations	E-commerce/E-delivery	California Insurance Code Section 38.6 imposes more onerous requirements than those required by UETA or E-sign, including a requirement to demonstrate proof of actual receipt of the record for electronically delivered documents	Allow for presumption of delivery if email is not returned undeliverable.	Electronic delivery has become increasing reliable whereas paper delivery is less reliable than it used to be. Consumers are also already required to agree to conduct business electronically before documents will be e-delivered. Imposing additional restrictions on e-delivery is not consistent with

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
				consumer expectations.
Application	Replacements	Requirement for agents to ask replacement questions. For simple products like term insurance, consumers and agents are increasingly wanting to complete the life insurance application digitally and on-line. The current model requires significant agent involvement in the replacement question and answer process, which impedes the ability of individuals to interact with insurance providers in their preferred format.	Revise the replacement model to allow for the replacement questions and disclosures to be completed by an insurance provider as part of a digital application process.	Consumers rarely opt-in to having the replacement disclosures read to them due to the length and complexity of the disclosures. In addition, there is a new generation of consumers who prefer to interact digitally. Allowing the replacement questions and disclosures to be provided as part of a digital experience for consumers who choose to do business electronically could increase the likelihood that the disclosures are actually heard/ viewed by consumers.
All	All	Minor state variations in requirements, such as replacement question language, fraud warnings, and specific marketing disclosure requirements, that do not materially affect consumer protections. Such variations inhibit the ability of companies to do business online and require	Encourage uniform adoption of NAIC model regulations	

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
		companies to incur excessive expense for things like having to write unique code for each state.		
Product	Product design and features	Anti-rebating laws limit the ability to offer new and innovative features related to the product, ex. estate planning with life insurance	Encourage state adoption of new NAIC unfair trade practices law	Sufficient guardrails exist in revised model law
Electronic Delivery	Cancellation Notice of Life Insurance	UETA excludes delivery of notices of cancellation or termination of life insurance benefits (excluding annuities) in the following states: AL, AK, CA, CO, CT, HI, LA, MD, MA, MS, NV, NJ, NM, NC, OR, SC, VT, WV, WI	Modify UETA and state insurance laws, if applicable, in these states to remove exclusion, allowing for delivery of these notices electronically.	Requirements under UETA will apply for electronic delivery of these notices. Timing, content, and secondary addressee requirements would continue to apply to electronic delivery of such notices in the same way they did to hard copy notices.
Electronic Delivery	Affirmative, opt-in Consent for Electronic Delivery of Insurance Documents	Numerous states require consumers to opt-in affirmatively (at least in some cases) to receipt of insurance documents, including: AL, AZ, CA, CO, CT, DE, DC, ID, IL, IN, IA, KS, LA, MD, MI, MN, MO, MT, NB, NV, NJ, NC, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY	Modify state laws to provide an "opt-out" structure for electronic delivery, which provides consumers the ability to choose to receive hard copy documents if desired.	Consumers would receive notice of ability to opt-out of electronic delivery and request a hard copy method for receipt of documents. Electronic delivery would be effectuated only if an electronic mailing address was

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
				provided by the consumer.
Electronic Communication	Termination Notices	Section 103(b)(2)(C) of E-SIGN provides that electronic delivery shall not apply to the termination of life insurance benefits. 25 jurisdictions have adopted the E-SIGN restriction on electronic delivery of termination notices, either in the state adoption of UETA or in their insurance e-delivery statutes. The remaining 27 jurisdiction that did not adopt this restriction allow for electronic delivery of termination notices as long as the policyowner consents to such delivery. The inconsistency between the two groups of jurisdictions requires insurers to maintain two set of processes and procedures, one for paper delivery and one for electronic delivery, or, when that is too inefficient, to forgo electronic delivery of termination notices all together.	Remove the E-SIGN prohibition in state adoptions of UETA in those 25 jurisdictions and allow electronic delivery of termination notices with a consent in all jurisdictions.	As is the case in the 27 jurisdictions that allow such deliveries, insurers can be required to receive consents from policyowners before sending termination notices electronically.
Electronic Communication	Electronic Delivery of Policies	California Insurance Code § 38.6 (b)(7) requires insurers to “demonstrate proof of delivery and actual receipt” when sending records electronically while no other jurisdiction requires such proof. This creates problems from an operations point of view as well as issues	The act of electronically delivering a document in most cases already creates a record of when the record has been transmitted. Additionally, Cal Ins	The consent required in order to transact electronically makes clear what documents will be delivered and the method in which they will be delivered. The consent can also

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
		with determining right to examine periods.	§ 10113.6 creates a proof of delivery/receipt exception for policies that are physically delivered whereby a policy is deemed to be received six months after the date of issuance if premiums have been paid that should apply to electronic delivery.	specify when the document is "received".
Electronic Transactions	Consent to electronic transactions	More than half of the jurisdictions require an explicit consent in order to conduct business electronically and specify standards for those consents. Of those jurisdictions, California, Utah and Georgia require the consents to be filed with the State as well. Filing requirements subject the insurer to delays in implementation and also thwart the ability to make modifications and improvements to the consents as experience may dictate as electronic transactions become more prevalent. A handful of other jurisdictions, like Tennessee and Kentucky, have unique requirements which	Removing the requirement to file consents with the states and harmonization of consent requirements across jurisdictions.	Insurers will still be required to adhere to the consent standards set forth in the applicable laws and regulators will still have the ability to review consents through market conduct reviews of insurers.

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
		necessitate the need for multiple versions of consents		
Notarizing Documents	Remote Online Notarization	Approximately 37 states have adopted some form of permanent remote online notarization (RON) law. As a consequence, a significant amount of jurisdictions do not currently have temporary or permanent RON law in place. Last year Senate Bill 1625, the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021 (the SECURE Notarization Act), was introduced as bipartisan legislation to authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce. The Bill would authorize every notary in the US to perform remote online notarizations (RON) using audio-visual communications and tamper-evident technology in connection with interstate transactions.	Remaining states should adopt some form of RON. Alternatively, if the SECURE Notarization Act becomes law in its current form, the industry should determine whether existing state laws meet the standards outlined in the federal act.	Detailed provisions regarding authentication, document retention, confirming witness signatures, etc.
Enrollment in employer group insurance coverages	Various Employer Policyholder and/or vendor electronic enrollment platforms	Insurance regulations that include content or filing requirements of enrollment forms	Exempt policyholder and vendor controlled enrollment forms, platforms and systems from content and filing requirements (i.e.	Content and form filing requirements would still apply to applications (i.e. situations where the insurer is making an underwriting decision)

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
			involving no underwriting decisions)	
Electronic signatures	UETA	Requires affirmative opt-in for electronic signatures	Change to allow affirmative opt-out for electronic signatures	Opt-out still allows customer to decline electronic signatures
Electronic applications	NY	NY DFS requires more information for approval of electronic applications (e.g., screenshots of each customer selection) than it does for paper applications	Approve electronic applications that contain exact information as approved paper applications	Provides same consumer protection by using electronic versions of approved paper applications
Electronic signatures	CA	CA has unique consent requirements for electronic signatures	Harmonize with other states	
Product	CA product approval	CA appears to not allow insurer to only offer a product through a fully electronic (non-paper) process		
Prospectus delivery and delivery of quarterly statements, confirms and reports	Variable products (SEC)	SEC requires affirmative consent to electronic prospectus delivery and delivery of other related documents	Change to allow for automatic enrollment in e-delivery and allow for an affirmative opt-out	
E-delivery of insurance policies and contracts	UETA	Requires affirmative opt-in for e-delivery	Change to allow for automatic enrollment in e-delivery and allow for affirmative opt-out	Opt-out still allows customer to opt out of e-delivery

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
Life and annuity sales	Delivery of replacement notices	Some states (AK, AR, AZ, LA, NJ, NC, RI, TX and UT) require re-delivery of the replacement notices in paper form if the notices were initially provided electronically, which unnecessarily duplicates the efforts required by the insurer.	Eliminate the re-delivery requirement.	Following normal e-delivery procedures will guarantee that the replacement notices have been delivered and that they are accessible to the applicants.
Website/document design	Advertising approvals	Different states mandate department reviews and approval of advertising materials related to LTC (other products?), and the term advertising can be broadly applied in the electronic realm. Different departments may seek changes, leading to varying requirements which are difficult to implement online	The NAIC/states should seek uniform standards in this area; departments should not be in the business of editing company documents.	If standards are set and defined for consumer protection, companies will be able follow those rules and departments can enforce violations of the standards.
Website/document design	Font size/logo/formatting rules	Different states mandate different design elements for a variety of forms/documents, leading to varying requirements across the states and are difficult to implement online	The NAIC/states should seek uniform standards in this area;	If standards are set and defined for consumer protection, companies will be able follow those rules and departments can enforce violations of the standards.
Disclosures/authorizations	Wet signatures	Massachusetts beneficiary notarization requirement		
Electronic Delivery	Bounce-back process	UT Code sec. 31A-21-316 requires a reversion to paper delivery by mail if an email is not delivered within two business	Expand the bounce-back requirement to greater than two business days,	Notice is still required for a required delivery; electronic delivery of a

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Function	Application	Current Impediments	Solution	Guardrails/Consumer Protections
		days, which can cause a bad client experience and unnecessary work due to factors beyond the insurer's and customer's control. Notice can still be accomplished by using means other than an email.	or require reversion to paper after three attempts to notify about different mailings.	required notice/statement can be made using a paper or mailed notification of the availability of the document. The customer must continue to opt-in to electronic delivery in the first instance, and thereafter, they can always choose to revert back to paper when desired.

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(B) In what ways are your efforts to conduct business electronically impeded by law or practice, either as an insurer, a producer, or a consumer of insurance?

The current requirements of E-Sign, which require that a consumer electronically consent, or confirm, his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent, is an impediment to our efforts to “thoroughly” conduct business electronically with consumers. The current requirements of E-Sign, as well as UETA, should be “updated” to reflect the significant advances in technology and consumers increased use of this technology, since the adoption of these statutes over 20 years ago. The electronic delivery of documents should become the “new” default, for these statutes and consumers would have the ability to “opt-out” of electronic delivery to receive paper documents. Companies continue to modernize/evolve to meet consumer expectations, so it is only appropriate that the e-commerce statutes and regulations also be modernized to meet consumer expectations.

Affirmative Electronic Consent Requirement

- Overall, the requirement to obtain the consumer’s affirmative consent is the major impediment to conducting business electronically using electronic delivery.
- The inability to default consumers into electronic delivery, even after the consumer completes an application electronically is incredibly challenging for the business. In this situation, a consumer has already demonstrated that they can and are willing to utilize an electronic process; we feel it would be beneficial for all to have the client automatically enrolled in electronic delivery unless they elect otherwise.
- In addition, if a consumer completes a paper application, we cannot under existing law in most states enroll the consumer in electronic delivery until that consumer goes online to affirm their consent electronically.
- We understand that Arizona has adopted a rule that would allow default to electronically delivery if an application is completed online, and we think this would be a useful model for other states to follow, since (see below) it is difficult from a systems perspective to have different rules for different states.

Lack of Uniformity

- The consent and disclosure requirements that apply to electronic delivery vary throughout the U.S. This lack of uniformity impairs the company’s compliance strategy for delivering documents electronically to consumers across multiple jurisdictions. It is generally not economically feasible for the company to have specific rules for certain states because we would need to build systems to segregate those states.
- As an example, when the company sends out a large volume of email communications, we must carve out emails sent to consumers in certain states, e.g., California, to manage compliance with email server “bounce rates.” In California, we must send the consumer a paper copy of a policy, statement, or trust document within five days of the bounce. Managing different state rules is burdensome and inefficient, so we may have to apply one state’s rule nationwide, depending on the system capabilities.

As a life insurer, we are constantly seeking ways to increase consumer access to life insurance and lifetime income products as well as providing high quality customer service to our existing customers for managing their products. For a consumer centric experience, we

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need to have the ability to communicate with consumers in the manners that they are used to communicating in other aspects of their daily lives, and we need to be able to offer convenient sales experiences like they are used to in shopping for other products.

Anecdotally, customers have consistently asked for greater ability to communicate with us electronically, and today's consumers of all ages are increasingly utilizing technology, especially mobile devices, to conduct their affairs.

Generally, there are a few key areas where existing law or practice can impede our efforts to conduct business with our consumers electronically:

- Requirements for hard copy delivery of certain insurance-related notices to consumers – specifically, grace and lapse notices (see example cited in (A) above).
- Inconsistent requirements across states for acceptability of, and elements necessary for, electronic signature and electronic delivery of documents, including for electronic correspondence with insureds.
- Inconsistent requirements across states and the Interstate Compact for filing of electronic application forms. Some states require filing of exact screenshots of electronic applications. This requires insurers to invest resources in programming without knowing whether such programming will be accepted or will need further changes. Additionally, it may require duplicative filing where insurers utilize multiple distribution partners with varying electronic transaction software. We'd urge regulators to instead publish clear outlines of the mandatory items to be included in any electronic application, as well as any prohibited items, and allow insurers to submit detailed descriptions of how their application meets these requirements.
- A need for clear regulatory guidance on requirements for use of voice signature. We would urge regulators to publish explicit requirements and expectations, consistently across states, for use of voice signature on insurance applications, including how voice signature may be captured; who can capture it; and how it must be documented. Without clear guidance, expectations may be defined company by company through market conduct activity within individual states, and may provide different consumer experiences across states.
- Requirements for in-person notarization of signatures. We would urge continued adoption across the states of remote electronic notarization to be permitted in lieu of in-person notarization, provided that it meets all requirements for notarization other than physical presence.
- "Opt-in" requirements for e-delivery of documents. As discussed above, consumers are increasingly conducting business online, and such impediments can limit the ability for insurers to improve upon providing more instantaneous communication and decision-making to consumers. Although we recognize that most state-adopted Uniform Electronic Transaction Acts require an opt-in, we note that these requirements, including the detailed disclosures and consents required in opt-in states, were adopted at a much different time in terms of mainstream use of electronic communication (e.g., disclosure of hardware requirements; see also the example cited in (A) above). State-specific language and/or filing requirements (including GA, IA, UT, SC, CA, KY and TN) for opt-in disclosures and consents also make it difficult to provide disclosures with key information to consumers in a digital first environment.

In addition to the consumer-focused areas above, there are also areas where existing law or practice can impede insurance company operations, including:

- Insurer company statutory filing requirements (such as financial statements) in hard copy and/or with original signature. Here, we would encourage permanent acceptance of such filings by electronic means, waiving hard copy, original signature, and similar filing requirements, as was done during the COVID-19 crisis.

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- Delivery of notices to insurance companies through U.S. mail without electronic delivery. We have observed regulatory notices and requests, ranging from proposed consent orders to advisement of updated guaranty notice requirements, being sent exclusively by U.S. mail to a single mailing address for a company. Particularly in a remote work environment as many insurers had during the COVID-19 crisis, this creates numerous opportunities for such communication to be delayed or lost, impeding insurer ability to respond and/or implement new requirements in a timely and complete manner.
- Requirements for on-site examinations by insurers of third-party administrators. We would urge regulators to make permanent the accommodations offered by many states during the COVID-19 crisis to allow for remote examinations.
- Requirements for on-site examinations of insurers. We would urge regulators to permit remote examinations of insurance companies to meet examination requirements. Insurers increasingly maintain pertinent records and documents online, and remote examinations create greater efficiencies to view and request information on such records, particularly for insurers who have multiple office locations housing different functions and staff.

Applying content and form filing requirements to enrollment platforms owned by (or contracted with) employer group policyholders causes an unnecessary burden on consumers of group insurance.

One of the issues with UETA is that companies need an opt in from a client to receive electronic communication otherwise we default to paper. Given the electronic world particularly as result of COVID that will continue post COVID, we would like to be able to default to electronic communication with a client needing to opt-in for paper.

Although not NAIC related, there are challenges from SEC perspective with respect to e-delivery and e-communications for variable products.

Research shows that consumers want a simplified experience in dealing with their insurers, and many consumers desire an all-digital process. In order to encourage consumers to take steps to protect themselves and their families, and to reach markets that will work only digitally, it is essential that the states support these processes. Unfortunately, several states continue to have requirements that necessitate paper processes without allowing even an option for digital. These states make it extremely difficult and expensive to create the seamless, electronic experience that many consumers desire. We would recommend that the NAIC survey states to find these requirements and work to eliminate them for consumers who desire to work digitally.

(1) Several states impose paper delivery requirements for insurance sales-related documents, which the insurer may choose to deliver in other states exclusively in electronic form. This requires the insurer to create and maintain costly dual delivery processes--a paper delivery process in a few states and an electronic delivery process in most other states. Additionally, the legality of such non-electronic delivery requirements is questionable under 15 U.S.C. § 7002(a), to the extent the state has not adopted UETA, and/or under 15 U.S.C. § 7003(b)(2)(C), to the extent the state is exceeding its leeway under UETA.

(2) A few states, such as New York, require full review and pre-approval of e-signature and e-delivery methods used in insurance applications and replacement transactions. E-signature and e-delivery methods that are clearly permissible under the federal E-SIGN statute should not be subject to pre-approval and/or possible rejection by the states.

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Many companies are striving to create new product designs to serve the needs of their customers and to provide more choice. These designs build upon existing regulatory frameworks but include innovative features that benefit clients. The Interstate Compact has provided great value in allowing companies to develop and deliver policies to consumer in a timely manner. Unfortunately, the Compact does not have standards that covers many of these new product concepts, so companies have to file state-by-state. We would recommend that the Compact's ability to review all type of products and features be expanded to allow for this product innovation. And, of course, the NAIC should encourage states that have not joined the Compact to do so.

Several states require insurers to seek approval of electronic processes. Due to the nature of having different reviewers, these reviews often result in conflicting demands that, at the end of the day, do not benefit consumers but requires different ways of achieving the same outcome. Having to build and maintain separate digital processes by state is costly and time consuming with no consumer benefit. Although we do not resist regulatory review, we believe that regulatory coordination and cooperation is critically important. One possibility may be to defer to lead state reviews of these processes as is often done in the solvency framework.

April 4, 2021

Commissioner Jon Godfread
Chair, NAIC Innovation and Technology (EX) Task Force
North Dakota Insurance Department
Via-email with copy to Denise Matthews (dmatthews@naic.org)

Re: NAIC Innovation and Technology (EX) Task Force Request for Comments
Specific Laws, Regulations or Regulatory Guidance That Impede the Use of E-commerce
ACLI Recommendations

Dear Commissioner Godfread:

The American Council of Life Insurers (ACLI) appreciates the opportunity to submit these comments in response to the request of the NAIC Innovation and Technology (EX) Task Force (Task Force) for comments relating to specific laws, regulations or regulatory guidance that impede the use of e-commerce. The points and recommendations below are intended as high-level observations that will hopefully help inform the Task Force as they discuss their path forward at the upcoming National Spring Meeting.

ACLI members work tirelessly to build relationships and maintain contact with their customers. These relationships often can last 40 years or more. ACLI members have learned that their customers increasingly seek to engage with their financial service providers digitally. Broadly speaking, most rules that apply to the relationships between insurers and their customers were conceived and written at a time when paper and face-to-face were the only way to connect. Most laws and regulations that have been put in place to accommodate electronic and digital communications have been done piecemeal over time and, importantly, as an *exception* to the ‘paper rule.’

These past 14 months have demonstrated that customers can interact with our members safely and efficiently via digital means. Insurance regulators, companies, producers and consumers are simply not going back to the world that existed prior to the onset of COVID-19. The regulatory community and the insurance industry, need to work constructively to transform current regulatory frameworks into consumer-centric, fully digitally-enabled frameworks.

I. ACLI Recommends a Thorough Review of Current State E-Commerce Laws

There are approximately 30 state insurance specific laws or regulations that impose requirements for e-delivery or other e-commerce activities in connection with the business of insurance. These insurance-specific laws are not generally related to any NAIC Model and they generally vary from state to state. As a result, consumers’ ability to efficiently connect with ACLI members is more limited than it needs to be. In addition, as discussed further below, state e-commerce laws

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The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

continue to include “opt-in” and related requirements that impose practical limitations that significantly inhibit a consumers’ ability to engage in e-commerce and limits a company’s ability to develop, test and implement newer, online technologies. These limitations are keeping certain broadly accepted and desired technologies from being introduced to consumers engaged with our members.ⁱ

To be clear, these various state laws and regulations are not, in and of themselves, bad or consumer un-friendly. They were, as noted above, implemented over time, often in response to current events and, generally, as an “exception.”

In order to illustrate the range of laws and regulations, we have provided below, a few examples of the many varied state specific insurance laws or regulations that impose requirements for e-delivery or other e-commerce activities.

ACLI recommends that NAIC establish a working group of regulators and stakeholders to make recommendations of a regulatory framework that is consumer-centric, safe, transparent and fully digitally-enabled. The ACLI further recommends that the NAIC give specific direction to the working group: to examine without accusation the current state of the e-commerce laws and regulations with a goal of identifying barriers to realizing the desired framework; to consider seriously all stakeholders’ goals; and to work towards meaningful, unified recommendations that are actionable by the NAIC.

II. ACLI Recommends an Opt-Out Paradigm Be the Default

We note that the federal Electronic Signatures in Global and National Commerce Act (E-Sign), the state model Uniform Electronic Transactions Act (UETA) and most state-adopted UETAs require an opt-in as a prerequisite to a consumer engaging in e-commerce with a business. E-Sign and UETA each require that a consumer consent electronically or ‘demonstrate his or her ability to consent or retain records electronically. These rules were put in place when faxes were still considered cutting edge. And the “reasonable demonstration” requirement meant, for practical purposes, that a consumer could read and store .pdfs. These types of access are so ubiquitous now that delaying digital engagement to demonstrate such access is unnecessary.ⁱⁱ

These opt-in and related requirements, coupled with other outdated regulatory requirements described above, jeopardize consumers’ ability to take advantage of transformative changes in online technologies.

III. ACLI Recommends Making Permanent the COVID-19 Temporary Accommodations Relating to E-delivery, E-signature, and Remote Notarization

ACLI again recommends that the recent temporary accommodations relating to electronic delivery of documents, electronic signatures and notarization and online fulfillment of producer licensing requirements, expressly be made permanent. ACLI believes that the temporary relief given by the regulatory community and the rapid change in business and personal interactions has proven that such enhancements continue to protect consumers and provide consumers with greater access to the critical financial protection products and services they need especially during times of uncertainty.

Specific Temporary Accommodations Include

- Waiver of hard copy, original signature, and related filing requirements to allow for e-delivery of company filings

- Allowance of e-signatures for company filings
- Allowance of remote examinations
- Allowed for continuing education requirements to be completed online
- Use and accept electronic signatures and records to facilitate transactions; while maintaining proof of consent from policyholder.

Last year, ACLI provided the Task Force a sample Model Bulletin that could be used to accommodate these specific changes. The actual content of such Bulletin would depend on the scope decided by the NAIC and the ACLI stands ready to assist the NAIC once specific scope is set.

The key purposes of such a bulletin would be to:

- (1) Clarify that the requirements of any state statute, regulation, or guidance that a signature, document, communication, disclosure, delivery or transaction, relating to the conduct of the business of insurance, be in written/tangible form or performed in person are satisfied by a signature, document, communication, disclosure, deliver or transaction that is in electronic form or performed electronically consistent with the requirements of the state UETA or similar law, unless the statute, regulation or guidance expressly prohibits such electronic signature, document, communication, disclosure, delivery or transaction;
- (2) Clarify the requirements for electronic delivery of documents in connection with insurance transactions;
- (3) Permit remote examinations of and by insurance companies to meet examination and investigation requirements; and
- (4) Permit/clarify that insurance agents may meet pre-licensing and continuing education requirements via electronic/online instruction.

IV. ACLI Recommends Review and Modification of State UETA Laws to Provide Clarity and Promote Uniformity

The Uniform Electronic Transactions Act (UETA) was adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. UETA allows regulated entities to conduct business electronically with consumers who have “opted-in” such conduct. UETA further provides for legal recognition of electronic signatures, records, and transactions. Forty-seven states have adopted UETA. As adopted, UETA generally applies to insurance documents and transactions, the electronic creation of insurance contracts and electronic delivery of insurance documents and disclosures, unless UETA or other state law expressly provides otherwise. And this is where the inconsistency creeps in. UETA varies state to state making e-commerce transactions between industry and its consumers more confusing and more difficult. Because of this, ACLI recommends that the Working Group recommended above be tasked with surveying states to identify the UETA insurance exceptions and variations and then prioritize state modification of UETA to bring uniformity.ⁱⁱⁱ

Conclusion

The ACLI believes that we have the opportunity, in these extraordinary times, to do something truly transformative to benefit the consumers that we all serve.

ACLI believes that our transition to a touchless society has accelerated consumers' and business' use and acceptance of electronic commerce and electronic delivery of all forms of documents. ACLI believes it is time for the state and federal regulatory communities to create paradigms that treat paper and electronic documents as being equal; today the paradigms consider paper to be "normal" and create exceptions for electronic documents. That is simply inconsistent with technology and consumer preferences.

ACLI looks forward to working with the NAIC to help modernize outdated regulatory requirements that have adversely impacted life insurers' businesses and made their interactions with consumers less efficient and effective.

Again, we thank you for the opportunity to submit these comments and would be glad to answer questions relating to any of the above.

Sincerely,

 <p>Gabrielle Griffith Senior Policy Analyst 202-624-2371 gabriellegriffith@acli.com</p>	 <p>Patrick Reeder Vice President and Deputy General Counsel 202-624-2195 patrickreeder@acli.com</p>
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ⁱ Current federal requirements, captured as an example in the E-SIGN legislation ([REFERENCE]), also require an "opt-in" paradigm.

ⁱⁱ We note that many of the state insurance specific e-delivery laws referenced above also include a similar opt-in and "reasonable demonstration" requirements.

ⁱⁱⁱ ACLI has certain law surveys and other work product that could be used by such a working group to facilitate an efficient analysis.

State Insurance Legislation

Legislative Changes

Kentucky

Insurer or Producer and Consumers

Relevant Laws or Regulatory Guidance: [KRS § 304.14-230](#) – Delivery of Policy

Current problem/requirement: Every policy must be delivered by mail.

Relevant Laws or Regulatory Guidance: [Advisory Opinion No. 2013-1](#) (KY INS BUL), 2013 WL 691213 (KY INS BUL) – Delivery of Notifications

Current problem/requirement: Consent to receive communications of cancellations, renewals, nonrenewals, and premium increases through electronic mail; includes reasonable demonstration requirement.

Relevant Laws or Regulatory Guidance: [Advisory Opinion 2006](#)

UETA deals with only the procedure of a transaction and the other substantive law will control and determine the legal effect of such transaction. Therefore, if an insurer conducts electronic transactions and uses electronic signatures, the Kentucky insurance statutes and regulations still apply.

- KOI will allow an insurer to use electronic signatures under the following circumstances:
 - Kentucky UETA does not negate the application of Kentucky statutes and regulations, such as [806 KAR 12:020](#), that may require actual signatures as opposed to electronic signatures. The insurer must comply with all insurance laws, confidentiality laws, and any other laws that would be applicable to the transaction, even if the affect of those laws dictate that an electronic signature cannot be utilized
 - Both parties must agree to conduct transaction by electronic means
 - If required, the insurer must be able to show that its security procedures are sufficient to verify that an electronic signature or record is that of a specific person and to assure that the information has not been altered in its transmission

Current problem/requirement: State statutes and regulations still require hard signatures; must comply with all laws “even if the affect of those laws dictate that an electronic signature cannot be utilized”

North Carolina

Insurer or Producer and Consumers

Relevant Laws or Regulatory Guidance: N.C.G.S.A. § 66-313 – Electronic records (UETA)

Current problem/requirement: Does not apply to notices of cancellations or termination of life insurance benefits; reasonable demonstration requirement;

Relevant Laws or Regulatory Guidance: N.C.G.S.A. § 66-327 – Consumer Transactions alternative procedures for acceptance for use or acceptance of electronic records or electronic signatures

Current problem/requirement: In a consumer transaction in which a statute, regulation, or rule of law of this State requires that information relating to a transaction or transactions in or affecting commerce be made available in writing or be disclosed to a consumer, the consumer's agreement to conduct a transaction by electronic means shall be evidenced as provided in [G.S. 66-315](#)

Relevant Laws or Regulatory Guidance: State UETA – N.C.G.S.A. § 66-315 - Use of electronic records and electronic signatures; variation by agreement

- Electronic permitted “in lieu of paper”
- Only applies to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.
- A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement
- Contains a “catch all” that notes. “Except as otherwise provided in this Article, the effect of any of its provisions may be varied by agreement.”
- Whether an electronic record or electronic signature has legal consequences is determined by this Article and other applicable law

Current problem/requirement: Numerous legislation on the use of electronic records/electronic signatures

Change Proposed: Need one uniform reg. (if not for all states then specific to NC)

Ohio

Insurer or Producer and Consumers Communications

Relevant Laws or Regulatory Guidance: [R.C. § 3901.41](#) – Automated transactions

Current problem/requirement: Reasonable demonstration requirements; unclear if allowed documents can be sent via email or must be posted via insurer secured website; may only post certain documents on website as long as there is no personally identifiable information; subsection C(2)(a) no allowance for notices of cancellation, termination, or nonrenewal to be posted to website but subsection (D) allows for notices of cancellation, termination, or nonrenewal to be sent via email, instant message, personal electronic communication device, wireless phone, or fax

Relevant Laws or Regulatory Guidance: [OH Bulletin No. 2001-3](#) (OH INS BUL), 2001 WL 35670585 (OH INS BUL) – Clarifies legal and compliance issues with the use of electronic insurance

Current problem/requirement:

- The burden is on the regulated entity to meet all existing requirements for delivery regardless of the method by which the policy or other record(s) are actually delivered to the recipient. Any policy, other record or communication delivered to an individual must be maintained by the regulated entity in accordance with applicable retention schedules and the regulated entity must be able, on demand, to provide an easily readable electronic or paper copy of the policy or document to the regulator or other party entitled to the information upon request.

Relevant Laws or Regulatory Guidance: [R.C. § 1306.04](#) – State UETA - Use of electronic records and electronic signatures; variation by agreement

Current problem/requirement:

(A) Under [Sections 1306.01 to 1306.23 of the Revised Code](#) electronic means permitted “in lieu of paper.”

(B) [Sections 1306.01 to 1306.23 of the Revised Code](#) apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(C) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this division may not be waived by agreement.

(D) Contains a “catch all” exception that **except as otherwise provided in sections 1306.01 to 1306.23 of the Revised Code, any of the provisions of such sections may be varied by agreement**

(E) Whether an electronic record or electronic signature has legal consequences is determined by [sections 1306.01 to 1306.23 of the Revised Code](#) and other applicable law.

INSURANCE DEPARTMENT BULLETIN/ORDER

ELECTRONIC TRANSACTIONS & COMMUNICATIONS IN CONDUCT OF THE BUSINESS OF INSURANCE
REMOTE EXAMINATIONS OF AND BY INSURANCE COMPANIES
ELECTRONIC INSTRUCTION OF INSURANCE AGENTS

Various provisions of the [insert name of state] insurance code require: (a) signatures, documents, records, communications, or activities related to insurance transactions to be in written/tangible form or performed in person; (b) examinations or investigations of or by insurance companies to be performed on site; and (c) insurance agents' pre-licensing or continuing education instruction to be in person or in a classroom. Often these provisions do not expressly permit or otherwise contemplate electronic signatures, documents, communications, disclosures, or transactions in connection with the conduct of the business of insurance, remote examinations of or by insurance companies, or electronic or online instruction of insurance agents.

The recent COVID-19 pandemic and associated "shelter in place" orders have highlighted certain outdated regulatory requirements as regulators, insurers and consumers navigate and adapt to this new environment. Now, more than ever, the insurance industry has a critical need to engage in electronic communications and transactions to conduct the business of insurance and serve consumers effectively and efficiently. Navigation of the pandemic also has demonstrated the benefits of remote examinations of and by insurance companies under certain circumstances and of electronic or online instruction for insurance agents seeking to meet pre-licensing and continuing education requirements.

[Insert title and citation to state UETA or similar law] expressly allows regulated entities to conduct business with consenting consumers electronically and provides for legal recognition of electronic signatures, records, and transactions. The provisions of [insert title of state UETA or similar law] apply to electronic insurance documents and transactions, the electronic creation of insurance contracts, and the transmission of insurance notices or disclosures in this state unless [insert reference to state UETA or similar law] or other law of this state expressly provides otherwise.

Various provisions of the [insert name of state] insurance code both grant the Commissioner authority to and set the parameters for the conduct of financial and market conduct examinations and investigations of insurance companies. These various provisions also require insurance companies to perform examinations of certain third-party administrators.

[Insert citation to appropriate provisions of state insurance code] require insurance agents to meet certain pre-licensing and continuing education requirements.

The purposes of this Bulletin/Order are to:

1. clarify that the requirements of any [insert name of state] insurance statute, regulation, or guidance that a signature, document, communication, disclosure, delivery or transaction, relating to the conduct of the business of insurance, be in written/tangible form or performed in person are satisfied by a signature, document, communication, disclosure, delivery or transaction that is in electronic form or performed electronically, consistent with the requirements of [insert reference to

state UETA or similar law], unless the statute, regulation or guidance expressly prohibits such electronic signature, document, communication, disclosure, delivery or transaction;

2. clarify the requirements for electronic delivery of documents in connection with insurance transactions;

3. provide guidance for insurers, producers, and other regulated insurance entities regarding other issues related to the electronic transaction of the business of insurance and provision of insurance products and services to consumers;

4. permit remote examinations of and by insurance companies to meet examination and investigation requirements; and

5. permit/clarify that insurance agents may meet pre-licensing and continuing education requirements via electronic/online instruction.

ELECTRONIC SIGNATURES, DOCUMENTS, COMMUNICATIONS, & DELIVERY

Any insurance statute, regulation or guidance of this state, including the statutory provisions listed in Appendix A, that requires a signature, document, communication, disclosure, or delivery to be in written/tangible form or to be performed in person is satisfied by a signature, document, communication, disclosure, or delivery that is in electronic form or performed electronically, consistent with the requirements of [insert reference to state UETA or similar law], unless the statute, regulation or guidance expressly provides otherwise.

Nothing in this Bulletin/Order requires a regulated party, insured, consumer or third party to conduct insurance transactions electronically.

A consumer retains full rights to accept certain transactions by electronic means and refuse other transactions by electronic means.

Electronic transactions and communications are subject to the record keeping requirements of the [insert name of state] insurance code and regulations.

Insurance transactions, records, and communications may be retained in electronic form.

ADDITIONAL CLARIFICATION RELATING TO ELECTRONIC DELIVERY

[Insert citations to appropriate sections of state UETA] do not list all the commonly used methods of electronic communication in its broad definitions of 'electronic record' and 'electronic signature'. These common methods include insurance records created, generated, sent, communicated, received or stored by electronic means, including email, voice signature, and web or Internet based submissions or communications between insurers and proposed insureds, insurance agents and regulated insurance entities.

Delivery of an insurance document in accordance with this Bulletin/Order shall be considered the equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

Unless expressly provided otherwise in relevant insurance law of this state, any notice or other document required in an insurance transaction may be delivered, stored, or presented by electronic

means so long as the delivery, storage or presentation meets the requirements of [insert reference to state UETA].

An electronic delivery by an insurer to any party also must meet the following requirements:

1. the party has affirmatively consented to that method of delivery, by electronic or other means, and has not withdrawn the consent;
2. the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:
 - i. Any right or option of the party to have the notice or document provided or made available in paper or another nonelectronic form;
 - ii. the right of the party to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed if the consent is withdrawn;
 - iii. Whether the party's consent applies:
 1. Only to the particular transaction as to which the notice or document must be given; or
 2. To identified categories of notices or documents that may be delivered by electronic means during the course of the party's relationship with the insurer
 - iv. The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and (2) the fee, if any, for the paper copy; and
 - v. The procedure a party must follow to withdraw consent to have notice or document delivered by electronic means and to update information needed to contact the party electronically.

The burden is on the regulated insurance entity to meet all existing requirements for delivery regardless of the method by which the policy or other record(s) are delivered to the recipient.

Any policy, other record or communication delivered to a person must be maintained by the regulated insurance entity in accordance with applicable retention schedules and the regulated entity must be able, within applicable timeframes prescribed by the relevant law or regulation to provide an easily readable electronic or paper copy of the policy or document to the regulator or other party entitled to the information upon request.

If an applicable insurance law or regulation requires a record, notice, or document to be attached to or enclosed with other records, documents, or notices, the law or regulation can be satisfied electronically so long as it is clear that the attached or enclosed record, document, or notice is logically associated with or linked to the same electronic record as the principal record, document, or notice.

ORAL COMMUNICATION

Except as otherwise expressly provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording qualifies as a notice or document delivered electronically.

NOTARIZATION & ATTESTATION

In line with [insert citation to appropriate section of state UETA], if a provision of any law or regulation of this state requires a signature, notice or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.

Remote electronic notarization (RON), conducted remotely over the internet using digital tools and live audio-video technologies, is permitted to be used in lieu of an electronic signature or notarization provided all requirements for notarization, other than any physical presence requirements, are met.

CLARIFICATION REGARDING JURISDICTION AND LICENSING, ADVERTISING, FORMAT, RECORD RETENTION, AND PRIVACY RELATED TO THE ELECTRONIC TRANSACTION OF THE BUSINESS OF INSURANCE

JURISDICTION AND LICENSING

The Department does not consider the mere maintenance or availability of a web site that contains insurance content, where the site owner has done nothing through such web site to purposely avail himself of the benefits of doing insurance business in this state, to alone constitute 'doing business.' Operating a web site, regardless of whether compensation is received, that includes insurance advertising does not constitute the transaction of insurance, provided that the operator does not otherwise solicit, sell or negotiate insurance. The Department will not assert jurisdiction over a web site in cases where consumers who visit the site are provided reasonable access to information indicating that the advertised products and services are not available in their state.

ADVERTISING

Subject to the above policy on jurisdiction, advertising on a web site is generally subject to the same rules as advertising in other media. For example, if changes in the content of a web site are of the type that would require re-approval of a print advertisement, then the web site changes require re-approval as well. Changes in the appearance of a website, with no changes in substantive content, would not generally require re-approval or separate recordkeeping.

FORMAT

As the graphical display presented on a consumer's monitor is, in large part, beyond the direct control of the regulated entity, the Department finds that specific format requirements, including fonts and paper size, originally established for printed documents are satisfied for electronically transmitted or displayed records by using characteristics that are designed to meet the same regulatory objective. For example, a requirement to use a specific color or font can be met so long as it has the same emphasis or distinguishing percentage proportions for the characters relative to the rest of the document.

RECORD RETENTION

Unless specifically required otherwise, electronic recordkeeping is generally subject to the same timelines and other standards as recordkeeping in other media. In [insert name of state], a regulated entity is in compliance with the state's recordkeeping requirements if it can reassemble the original information upon request. In cases where there is no paper document, a regulated entity shall be in compliance if it can produce the information or data that accurately represents the record of the information or data.

PRIVACY

[Insert title and appropriate citation to state insurance privacy laws relating to the confidentiality and security of consumers' personal information] and other applicable privacy laws are equally applicable to all media, including electronic media.

In line with statements above relating to electronic documents, communications and delivery, the requirements of any statute, regulation or guidance of this state for privacy notices and disclosures to be in written/tangible form are satisfied by a document, communication, disclosure or notice that is in electronic form or performed electronically, consistent with the requirements of [insert reference to state UETA] and the specific requirements of relevant state insurance privacy laws. The burden is on the regulated entity to meet all existing requirements of any statute, regulation or guidance of this state to protect the security, as well as the confidentiality, of any insurance privacy notice or other disclosure delivered in this state, regardless of the method by the privacy notices or other disclosure document is delivered.

Any privacy notice delivered to an individual in this state must be maintained by the regulated insurance entity in accordance with applicable retention schedules, and the regulated entity must be able, within applicable timeframes prescribed by relevant law, to provide an easily readable electronic or paper copy of the policy or document to the Department or other party entitled to the information on request.

REMOTE FINANCIAL AND MARKET CONDUCT EXAMINATIONS OF OR BY INSURANCE COMPANIES

The requirements of any statute or regulation of this state, including the statutory provision(s) listed below, that a financial or market conduct examination or other investigation of an insurance company be performed onsite, or that an insurance company conduct an onsite examination of certain third party administrators, may be satisfied by an examination or investigation that leverages existing, proven processes performed remotely by the Commissioner or his/her delegates, as applicable:

[INSERT INSURANCE CODE CITATIONS] directing the insurance commissioner to conduct of financial and market conduct examinations and investigations of insurance companies.

Waiver of On-Site Review Requirements

Pursuant to (insert reference to applicable state law based on Section 5(C) of the NAIC Managing General Agents Model Act (#225)) insurers are required to, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of a managing general agent.

Pursuant to (insert reference to applicable state law based on Section 7(H) of the NAIC Third Party

Administrator Model Act (#1090)) insurers are required to, at least semiannually, conduct a review of the operations of its third-party administrator in cases where an administrator administers benefits for more than one hundred (100) certificate holders, subscribers, claimants, or policyholders on behalf of an insurer, and at least one such review must be conducted on site.

Insurers may conduct reviews of managing general agents or third-party administrators through electronic information to satisfy their on-site review obligations under (insert reference to applicable state law based on Section 5(C) of Model #225 and Section 7(H) of Model #1090).

AGENTS' PRE-LICENSING & CONTINUING EDUCATION REQUIREMENTS

The requirements of any statute or regulation of this state, including the statutory provision(s) listed below, that an insurance agent fulfill certain pre-licensing or continuing education requirements by classroom or in person instruction may be satisfied by electronic or online instruction that otherwise meets the specified pre-licensing and continuing education requirements:

[INSERT INSURANCE CODE CITATION] imposing prospective insurance agents' pre-licensing requirements

[INSERT INSURANCE CODE CITATION] imposing insurance agents' continuing education requirements

APPENDIX A

COMMUNICATIONS BETWEEN AN INSURER OR PRODUCER AND CONSUMERS

- [INSERT STATE INSURANCE CODE CITATION] - Delivery of policies and contracts
- [INSERT STATE INSURANCE CODE CITATION] – Delivery of notices and disclosures related to insurance.
- [INSERT STATE INSURANCE CODE CITATION] – Delivery of privacy notices related to insurance
- [INSERT STATE INSURANCE CODE CITATION] - Evidence of insurance.
- [INSERT STATE INSURANCE CODE CITATION] - Complaints.
- [INSERT STATE INSURANCE CODE CITATION] - Surplus lines broker’s notice to insured.
- [INSERT STATE INSURANCE CODE CITATION] - Health discount plans.
- [INSERT STATE INSURANCE CODE CITATION] - Disclosures and notices related to portable electronic devices insurance.
- [INSERT STATE INSURANCE CODE CITATION] - Assignment of policies.
- [INSERT STATE INSURANCE CODE CITATION] – Consumer request for copy of application, alteration
- [INSERT STATE INSURANCE CODE CITATION] - Minor may give acquittance.
- [INSERT STATE INSURANCE CODE CITATION] - Forms for proof of loss to be furnished.
- [INSERT STATE INSURANCE CODE CITATION] - Notice of long-term care benefits denial.
- [INSERT STATE INSURANCE CODE CITATION] – Disclosures, notices and other communication regarding long-term care benefits.
- [INSERT STATE INSURANCE CODE CITATION] - Notice of election by attorney in fact.
- [INSERT STATE INSURANCE CODE CITATION] - Consumer information notice for multiple employer welfare association.
- [INSERT STATE INSURANCE CODE CITATION] - Applications for insurance in formation of mutual insurer.
- [INSERT STATE INSURANCE CODE CITATION] - Reciprocal insurer authority of attorney-in-fact.
- [INSERT STATE INSURANCE CODE CITATION] – Forms for customer service requests

INSURERS’ & PRODUCERS’ COMMUNICATIONS WITH THE DEPARTMENT OF INSURANCE

- [INSERT STATE INSURANCE CODE CITATION] - Certificate of Compliance
- [INSERT STATE INSURANCE CODE CITATION] – Reinsurance Attestation
- [INSERT STATE INSURANCE CODE CITATION] – Certificate of Investment in PR securities
- [INSERT STATE INSURANCE CODE CITATION] – Schedule of Excess Risks
- [INSERT STATE INSURANCE CODE CITATION] – Officer Gear Filing (president authorizing specific officers to certify that reporting is accurate)
- [INSERT STATE INSURANCE CODE CITATION] – Officers and Directors Insurance Coverage
- [INSERT STATE INSURANCE CODE CITATION] – Certificate of Authority Renewal
- [INSERT STATE INSURANCE CODE CITATION] – Ordinary and Extraordinary Dividend
- [INSERT STATE INSURANCE CODE CITATION] – Concentration of Risk
- [INSERT STATE INSURANCE CODE CITATION] – Surplus Note
- [INSERT STATE INSURANCE CODE CITATION] – Application for Certificate of Authority
- [INSERT STATE INSURANCE CODE CITATION] – UCAA Filing
- [INSERT STATE INSURANCE CODE CITATION] – Registration Statement
- [INSERT STATE INSURANCE CODE CITATION] – Application required, life and health insurance
- [INSERT STATE INSURANCE CODE CITATION] - Filing and approval of forms.
- [INSERT STATE INSURANCE CODE CITATION] – Form filing, subject to prior approval
- [INSERT STATE INSURANCE CODE CITATION] – Form filing, subject to file and use; penalties
- [INSERT STATE INSURANCE CODE CITATION] - Application to the director for a hearing on a disapproved filing.
- [INSERT STATE INSURANCE CODE CITATION] - Application to the director to file a deviation.
- [INSERT STATE INSURANCE CODE CITATION] - Rate filings, supplementary rate information, supporting information, application to director to make rate effective before expiry of waiting period, and application to director to extend to time to provide information.
- [INSERT STATE INSURANCE CODE CITATION] - Demand for hearing.
- [INSERT STATE INSURANCE CODE CITATION] - Application for certificate of authority.
- [INSERT STATE INSURANCE CODE CITATION] - Application for voluntary surrender of

certificate.

- [INSERT STATE INSURANCE CODE CITATION] - Statement of actuarial opinion and supporting documents.
- [INSERT [STATE INSURANCE CODE CITATION] - Insurer's required notice of change to the division.
- [INSERT STATE INSURANCE CODE CITATION] - Biographical affidavits.
- [INSERT STATE INSURANCE CODE CITATION] - Risk based capital reports.
- [INSERT STATE INSURANCE CODE CITATION] - Quarterly and annual statutory financial statements, whether audited or unaudited.
- [INSERT STATE INSURANCE CODE CITATION] - Statutory management discussion and analysis reports
- [INSERT STATE INSURANCE CODE CITATION] - Risk based capital report for foreign insurers.
- [INSERT STATE INSURANCE CODE CITATION] - Consent of insurer to release of report.
- [INSERT STATE INSURANCE CODE CITATION] - Written explanation of failure to file report by due date.
- [INSERT STATE INSURANCE CODE CITATION] - Statement regarding the acquisition of control of or merger with a domestic insurer on Form A (or any comparable form)
- [INSERT STATE INSURANCE CODE CITATION] - Registration of insurers who are members of an insurance holding company system and disclaimer of affiliation on Form B (or any comparable form).
- [INSERT STATE INSURANCE CODE CITATION] - Prior notice of an affiliate transaction on Form D (or any comparable form)
- [INSERT STATE INSURANCE CODE CITATION] - Pre-acquisition notification form regarding the potential competitive impact of a proposed merger or acquisition by a non-domiciliary insurer doing business in this state or by a domestic insurer on Form E (or any comparable form)
- [INSERT STATE INSURANCE CODE CITATION] - Enterprise risk report on Form F (or any comparable form)
- [INSERT STATE INSURANCE CODE CITATION] - Own risk and solvency assessment reports, or similar reports
- [INSERT STATE INSURANCE CODE CITATION] - Corporate governance annual disclosure reports, or similar reports
- [INSERT STATE INSURANCE CODE CITATION] - Written consent to public release of

confidential information.

- [INSERT STATE INSURANCE CODE CITATION] - Notice to director by domestic insurer of assignment of assets.
- [INSERT STATE INSURANCE CODE CITATION] - Licensee's required notice of change to the division.
- [INSERT STATE INSURANCE CODE CITATION] - Termination of appointment.
- [INSERT STATE INSURANCE CODE CITATION] - Controlling insurance producers.
- [INSERT STATE INSURANCE CODE CITATION] - Acting as a managing general agent.
- [INSERT STATE INSURANCE CODE CITATION] - List of supervisors and current insurers for third-party administrators.
- [INSERT STATE INSURANCE CODE CITATION] - Third-party administrator contract.
- [INSERT STATE INSURANCE CODE CITATION] - License exceptions reinsurance intermediary broker.
- [INSERT STATE INSURANCE CODE CITATION] - Reinsurance intermediary manager contract.
- [INSERT STATE INSURANCE CODE CITATION] - Report to director of surplus lines insurance placement.
- [INSERT STATE INSURANCE CODE CITATION] - Report to director of placement of insurance with non-admitted insurer.
- [INSERT STATE INSURANCE CODE CITATION] - Surplus lines transaction report.
- [INSERT STATE INSURANCE CODE CITATION] - Insurer or licensee notice to the division of fraud.
- [INSERT STATE INSURANCE CODE CITATION] - Application to the director to authorize a filing to become effective before the waiting period has expired.
- [INSERT STATE INSURANCE CODE CITATION] - Actuarial certification to the director for small employer health insurance.
- [INSERT STATE INSURANCE CODE CITATION] - Application to the director for a hearing.
- [INSERT STATE INSURANCE CODE CITATION] - Trust agreement for formation of mutual.
- [INSERT STATE INSURANCE CODE CITATION] - Filing domestic mutual insurer reinsurance contract with director.
- [INSERT STATE INSURANCE CODE CITATION] - Notice of election by attorney in fact.
- [INSERT STATE INSURANCE CODE CITATION] - Joint insurance cooperative agreement

- [INSERT STATE INSURANCE CODE CITATION] - Examination of producers, adjusters & promoters
- [INSERT STATE INSURANCE CODE CITATION] – Examination reports

COMMUNICATIONS BETWEEN AN INSURER AND ITS PRODUCERS

- [INSERT STATE INSURANCE CODE CITATION] - Insurer's notice of suspension or revocation to agents and MGAs.
- [INSERT STATE INSURANCE CODE CITATION] - Termination of an appointment.
- [INSERT STATE INSURANCE CODE CITATION] - Controlling insurance producers.
- [INSERT STATE INSURANCE CODE CITATION] - Managing general agents.
- [INSERT STATE INSURANCE CODE CITATION] - Insurer's third-party administrator.
- [INSERT STATE INSURANCE CODE CITATION] - Reinsurance intermediary brokers.
- [INSERT STATE INSURANCE CODE CITATION] - Reinsurance intermediary manager contract.
- [INSERT STATE INSURANCE CODE CITATION] – Application for agent's contract and/or appointment.
- [INSERT STATE INSURANCE CODE CITATION] – Onboarding forms and agreements for appointed producers.

E-Commerce & Innovation Handbook Chapters

Introduction of Consumer-Protective e-Commerce Goals

This Handbook will provide an overview of the federal E-Sign law and state UETA and other e-commerce laws, and explain how they interact with each other and with the state insurance laws.

Electronic commerce is governed by three types of laws: the federal E-Sign Act (15 USCS §§ 7001 et seq.); the various state Uniform Electronic Transactions Act (UETA) laws;¹ and state insurance laws. These laws generally provide that a document or a signature will not be denied legal effect merely because it is in an electronic format, provided that all of the relevant requirements are met. In essence, as long as insurers comply with these requirements (consent, filings, opt out offers, etc.), the insurer is permitted to do business with applicants and policy owners electronically, and to obtain electronic signatures. The list of requirements is long, but an attempt at summarizing them is below. These laws also allow for the electronic delivery of documents, again subject to certain requirements.

The significant provisions of the electronic commerce laws are as follows:

- 1 **Validity** – The validity of a contract or a signature is not affected by whether it is in an electronic format or electronically signed. However, electronic commerce laws do not change any substantive laws or vitiate any obligations imposed by other laws, such as state insurance laws.
- 2 **Satisfaction of Requirement of Writing** – If a law requires that a record or information be provided in writing, an electronic record satisfies the law. If a law requires a signature, an electronic signature satisfies the law.
- 3 **Electronic Signature** – An electronic signature includes sounds, symbols and processes that are attached to or logically associated with a record and executed by the signer with the intent to sign the record.²
- 4 **Consent Generally** – The consumer³ must consent to do business with the insurer electronically in order to receive information or documents related to the transaction

¹ A Uniform Electronic Transactions Act has been enacted by all but three states (as well as Puerto Rico), with Illinois, New York and Washington being the only exceptions.

² Certain states, like Nebraska and Maine, have passed the Digital Signatures Act. Although the scope of these Digital Signatures Acts is not entirely clear, the Acts are likely limited to state agencies. Several key provisions reference state agencies and political subdivisions, not private parties. Moreover, key provisions of each would be unnecessary as applied to private parties because they are generally duplicative of UETA.

³ The word “consumer” is used in this section to indicate that the laws generally apply to beneficiaries and third parties in addition to policy owners and insureds.

electronically, and this consent must not have been withdrawn at the time of delivery. Under UETA, the question of whether the parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. However, e-Sign contains explicit consumer protection consent requirements. A consent does not expire under UETA, although a consumer can always withdraw consent.

However, recently enacted insurance laws authorizing "delivery by electronic means" and explicitly permitting delivery by posting policies on an insurer's website require that the insurer supply current recipients of electronic material with a new notice – including an opt out option – if the insurer wishes to send them additional materials. Some states also require that insurers obtain the consumer's consent for those consumers who consented to electronic delivery prior to the effective date of the new insurance code provisions.

5 **Disclosures for Consent** – Prior to getting consent, an insurer must provide the customer with a "clear and conspicuous statement" that:

- Tells the consumer of their right to have records made available to them on paper or in non-electronic form.
- Gives the consumer the right to withdraw such consent – to "opt out" – and includes the consequences of doing so, which may include termination of our relationship with them.
 - Note that E-Sign (section 7001) specifically permits the termination of the relationship as a consequence of refusing to conduct transactions electronically.
- Informs the consumer whether their consent is a "one time" consent that applies only to the particular transaction or whether it applies to all insurance-related records and documents. A person who agrees to conduct a transaction by electronic means may refuse to conduct other transactions electronically.
- Describes the procedures to be used to update the consumer's contact information or to withdraw their consent.
- Advises the consumer of their right to request paper copies of documents even after they have consented to do business with us electronically.
- Tells the consumer about the hardware and software requirements for access to, and retention of, electronic records, and advises the consumer regarding changes, if any, in the hardware and software requirements, and provides the consumer with an opportunity to opt out.

- 6 **Consent Requirements** – The consumer’s consent must be provided or confirmed in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the notices or documents that are the subject of the consent.

There is a requirement in certain states that both the consent and the confirmation be provided in the same medium as the documents being provided. As written, those laws mean that an insurer cannot obtain either a paper consent or a telephone consent when we intend to send documents to the client by email.

- 7 **Consumer Retention Requirement** – The consumer must be able to retain the electronic document at the time that they receive it.⁴

- 8 **Final Form** – Insurers are required to maintain the information from the record in its final form. Where that final form is a tangible document, the document and its associated signatures must be retrievable in tangible form and remain accessible for later reference. The record does not need to be retained in its original form.

- 9 **Oral Delivery and Signatures** – Oral communications, or recordings of oral communications, standing alone do not qualify as electronic records except as provided under applicable law. Oral signatures are permissible; however, they cannot be used to create an electronic “record.” As required by both state and federal law, a “record” must be in a tangible form – “inscribed on a tangible medium,” and “retrievable in tangible form.” Applications that are taken orally, and disclosure documents that are delivered orally, do not without further processing meet this requirement. Generally, applications that are taken orally and converted to an electronic format that can be retrieved digitally do meet the definition of electronic records.

There are some states that restrict the use of oral signatures – these are noted in the state analyses below.

- 10 **State Preemption** – State laws may modify and limit the application of the federal E-Sign law.

- 11 **Exclusions** – Certain transactions may not be conducted electronically.⁵ Under E-Sign, the “cancellation or termination of health insurance or benefits or life insurance benefits,

⁴ UETA also governs when documents are “sent and received.” A record is “sent” when it is properly addressed to the recipient, directed to the recipient’s information processing system; is in a form capable of being processed by that system; and enters that information processing system outside the control of the sender.

⁵ E-Sign and UETA (with some state variations) do not apply to transactions to the extent that they are governed by laws regulating any of the following:

- A law governing the creation and execution of wills, codicils, or testamentary trusts.
- Most Uniform Commercial Code laws.
- Laws governing adoption, divorce, or other matters of family law.
- Court documents required to be executed in connection with court proceedings.

excluding annuities,” cannot be accomplished electronically. Thus, technically, E-Sign permits electronic cancellation of annuities. On the other hand, life insurance policies cannot be cancelled via electronic means under E-Sign. However, this distinction may be modified or otherwise impacted by state law.

12 **Further Retention Requirements** –

Where retention of a record is required, an electronic record satisfies the requirement provided that it:⁶

- (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
- (2) remains accessible for later reference.

An electronic record retained in accordance with the above requirement satisfies any law requiring retention of a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of the particular state’s UETA law specifically prohibits the use of an electronic record for the specified purpose.

State Insurance Laws (delivery by electronic means)

In addition to the requirements under UETA and E-sign, several states have amended their insurance laws to provide for delivery by electronic means, which is typically defined as delivery to an email account or posting on a web site, with separate notice via email.

These laws contain a series of requirements, most of which are covered above and relate to the content of the consent agreement. Generally, state-specific insurance delivery laws:

- Define “delivery by electronic means” as delivery to an email address or posting to an electronic network or Internet site coupled with separate notice sent via email.
- Allow notice to a person of any document required in an insurance transaction or serving as evidence of insurance coverage to be delivered, stored, and presented by electronic means.

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- Notice of cancellation or termination of utility services, including water, heat, and power.
 - Notice of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.
 - The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities.
 - Product recalls.
 - Documents required for the transportation or handling of hazardous materials.

⁶ Note that the method used to retain the electronic record for variable products must also comply with SEC Rule 17a-3 and Rule 17a-4.

- Provide that electronic delivery of a notice or document is equivalent to any delivery method otherwise required by law, including delivery by first class mail, certified mail or certificate of mailing.
- Contain consent and other technical requirements similar to UETA and e-SIGN laws. Consent must be given or confirmed electronically in a manner that reasonably demonstrates that the party can access written communications in that media. Consent cannot be given on the telephone.
- Require hard-copy means of delivery when there is reason to believe that a consumer has not received materials that were sent electronically. In some states, an individual's consent to receive electronic communications is revoked if the individual is not receiving electronic communications. A process must be established to identify individuals who are not receiving electronic communications and to delivery non-electronic notices/documents, if necessary.

However, some newer state-specific laws do not apply to consents provided before their respective effective dates (generally between 2013 and 2016), which may lead to circumstances where certain policy forms or business lines are subject to different regulations depending on when they were issued.

Under some state-specific delivery laws, insurers who have issued business that pre-dated the enactment of a state specific e-commerce law will likely need to supply current recipients of electronic material with a new notice – including an opt-out option – if an insurer wishes to send them additional materials. For example, a South Dakota law permitting electronic delivery does not apply to a party who provided consent in advance of the law. If the insurer intends to deliver future electronic notices or documents to such a party, then prior to delivering such additional notices or documents electronically, the insurer must notify the party of:

- The notices or documents that may be delivered by electronic means that were not previously delivered electronically; and
- The party's right to withdraw consent to have notices or documents delivered by electronic means.

Because oral communications, and recordings of oral communications, do not tend to qualify as written communications delivered by electronic means under the new state laws, the reading of certain disclosure documents (e.g., agent compensation; military disclosure) will not satisfy a requirement that such information be provided “in writing.”

Web Posting Delivery Requirements and State Variations

Since 2012, several states have amended their insurance laws to provide for “delivery by electronic means,” which is typically defined to include posting on a web site with a separate notice via email providing a link to access the document. The majority of these laws were

adopted at the urging of property and casualty carriers, whose products are generally standard forms that do not contain any personally identifiable information.

Below is a summary of the four general categories of states with respect to web posting:

- In fifteen jurisdictions, posting policies and other documents on the insurer's website (or its vendor's website)⁷ with a separate notice via e-mail that provides a link to access the document(s) is expressly permitted (for life and health, or for all lines).
- In twelve states, posting is expressly permitted for property and casualty lines under certain conditions, but website posting is not addressed for life and health lines (and these states may also have insurance-specific electronic delivery laws that generally permit electronic delivery). Arguably under a conservative interpretation of the law in these states, an insurer may only post insurance policies for property and casualty lines (because the legislature only expressly permitted posting activity for property and casualty lines). A better reading, however, is that UETA is sufficiently broad and likely permits posting insurance policies on a secure website with an e-mail link for delivery.
- In nine states, website posting is not addressed at all, but these states have insurance-specific electronic delivery laws that generally permit delivery by electronic means.
- Finally, in twelve states, posting is not addressed at all and these states do not have insurance specific e-delivery laws.

There is ambiguity in the laws of certain states where website posting is not addressed or expressly permitted for all lines. That ambiguity presents limited regulatory and compliance risk. Nonetheless, in our view, it is a reasonable approach in all states to deliver policies and other insurance documents by posting them to a website with a separate notice via email providing a link to access the documents.

Providing Signed Applications: Two states have a requirement to provide a copy of the policy:

- In Minnesota, insurers must provide a copy of the signed application within 24 hours of receiving it.

⁷ Many insurance e-delivery laws permit posting of policies and documents on the *insurer's* website. Where an insurer has contracted with a third-party to perform an essential business function on behalf of that insurer (e.g., with respect to iPipeline, DX and Firelight), it may be reasonable to interpret an "insurer's website" to include websites that are hosted by third-parties with whom the insurer has contracted to perform an essential business function on behalf of Insurer.

- In North Carolina, an entity must provide a hard copy of a contract if the consumer conducted the electronic transaction on electronic equipment provided by the seller. Although there is limited guidance on this provision, a reasonable interpretation is that it is intended to cover situations where a consumer enters into an agreement on-site (e.g., applying for a store card at a check-out line) using equipment that is provided by a seller. Under this interpretation, this provision would not apply to Insurer's business process where, for example, a consumer uses an agent's computer to complete an application.

Securities laws

History and Present State of Electronic Regulation

Electronic filings and signatures

SERFF

Notarization

Remote market conduct and financial exams

History and Present State of Insurer Uses of Technology ("Regulatory Fulfillment in a New World")

Uniform Electronic Transactions Act

Electronic Signatures in Global and National Commerce Act

Delivery of Consumer Notices

Replacement

Producer and Adjuster Electronic Regulation

NIPR

Remote Producer Exam

Pre-licensing Education/Continuing Education/Appointments/Renewals/Terminations

- Other Electronic/Technology Issues
- Appendix
- Best Practices
- FAQs