

E-COMMERCE (H) WORKING GROUP

INTRODUCTION

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 The survey also asked whether any of these exceptions had expired, had been rescinded or were made permanent either by legislation or through department action.

The Working Group also sent a survey to insurers and industry stakeholders asking them to identify any specific technologies, communications, transactions or any other forms and methods of electronic commerce that may currently impede their ability to conduct business electronically, in part because many of the exceptions to state law or regulation that were put in place during the pandemic may no longer be in effect.

After receiving and discussing the survey results, the Working Group organized the responses into a format best suited for consideration going forward. That format organizes the areas of concern into the following five broad categories: (1) e-signature; (2) e-notices; (3) policy issues; (4) claims; and (5) a general “other” category.

What follows is a breakdown of each of those categories. The breakdown includes the topics within the categories, explanations of each of the topics, industry requests related to each of the topics, concerns with the industry requests, possible solutions to the concerns, and any possible complications associated with the topics.

(1) E-SIGNATURE

The first category is e-signature. The Uniform Electronic Transactions Act (UETA) defines electronic signature or e-signature as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” The topics in the e-signature category are wet signatures, remote online notarizations (e-notary or RON), and elimination or minimization of notarization requirements.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Wet Signatures	A wet signature is created when an individual physically marks a document, as opposed to e-signature, which happens electronically	Allow affirmative opt-out for e-signatures, make opt-in the default	No conscious decision made for e-signature by consumer	Add opt-in clauses to applications and policies to allow for e-signatures and e-notices	Employee training; may require amending existing state laws; consent to e-signature limited to per transaction
Remote Online Notarizations (E-Notary or RON)	A remote online notarization generally allows a signer to personally appear before the notary using audio-visual technology instead of being physically present in the same location as the notary	Remaining states should all adopt some form of RON	Could create doubt regarding signature authenticity	Issue bulletin(s) or change(s) in interpretation that RON meets notary requirements	Employee training; may require amending existing state laws; consent to e-signature limited to per transaction
Eliminate/Minimize Notarization Requirements	There is the potential to eliminate or minimize notarization requirements that may present unnecessary regulatory barriers	Statutory modifications and policy updates to clarify where notarization is still required	Notarizing signatures helps guarantee that the signature is authentic	Survey states asking whose statutes require notarization and why these are necessary	May require amending existing state laws; State legislature and/or Governor disagreeing with doing so

(2) E-NOTICES

The second category is e-notices. This category examines the electronic delivery of insurance documents, including the electronic delivery of notices (or e-notices). The topics in the e-notices category are wet signatures, lapse/termination notices, proof of delivery, and replacement questions (life).

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Wet Signatures	A wet signature is created when an individual physically marks a document, as opposed to e-signature which happens electronically	Allow affirmative opt-out for e-signatures, make opt-in the default	Many consumers still want applications, policies and correspondence on paper and will refuse opt-out	Amend UETA and/or insurance specific statutes, laws, rules, bulletins; differentiate between two types of insurers and establish e-insurers/product (opt-out) and historically paper (opt-in)	UETA much broader than just insurance; may require amending existing state laws
Lapse/Termination Notices	This topic focuses on the electronic delivery of lapse/termination notices to policyholders	Make electronic communication equal to First class mail; modify UETA and state laws allowing for delivery electronically	Many consumers still want applications, policies and correspondence on paper and will refuse opt-out	Bulletin, regulation or statute to allow for e-delivery any time communication must be sent; differentiate between two types of insurers and establish e-insurers/product (opt-out) and historically paper (opt-in)	UETA much broader than just insurance; may require amending existing state laws
Proof of Delivery	This topic focuses on how an insurer may demonstrate the successful electronic delivery of an insurance document	Allow for presumption of delivery if email is not returned as undeliverable	Property and casualty statutes in many states are different and require different notices	Bulletin, regulation or statute to allow for e-delivery any time communication must be sent; differentiate between two types of insurers and establish e-insurers/product (opt-out) and historically paper (opt-in)	May require amending existing state laws; State legislature and/or Governor disagreeing with doing so
Replacement Questions (Life)	If a policyholder is contemplating purchasing a life insurance policy or annuity	Revise replacement model, allow replacement	Model #613 requires producer to leave the original or copy of all sales	Do all states have the most up-to-date model? Or does	NAIC must compile which version of the model each state has

	contract and discontinuing or changing an existing policy or contract, Model #613 requires the applicant to initial if he or she does not want notice read aloud	questions and disclosures to be part of a digital application process	materials at time of application; also requires electronic sales materials be provided in printed form no later than time of policy/contract delivery	industry want the entire model revised?	adopted; possible that few states have adopted updated model with others not realizing their version is outdated
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(3) POLICIES

The third category is policies. This category focuses on the insurance policy. The topics in this category are state variations in policy requirements, regulations that include content or filing requirements of enrollment forms, re-delivery requirement of replacement notices in paper form if initially provided electronically, enrollment in employer group coverage, UETA exclusion of delivery of notices of cancellation or termination of life insurance benefits, and anti-rebating laws.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
State Variations in Policy Requirements	The industry raised concerns that minor variations in insurance policy requirements limit its ability to do business online and require excessive expense to create unique code for each state	Make uniform requirements for issues such as replacement question language, fraud warnings and marketing disclosures that do not materially affect consumer protections		Encourage uniform adoption of NAIC model regulations	
Regulations that include content or filing requirements of enrollment forms	The industry raised this topic particularly as it relates to enrollment in employer group insurance coverages	Forms or applications may each have different legal requirements depending on the type of policy and/or state; need uniformity		Each electronic application must be approved prior to use by the Department; all changes must be approved	
Re-delivery requirement of replacement notices in paper form if initially provided electronically	The industry raised concerns that some states require delivery of the replacement notice in paper form for life and annuity sales	This unnecessarily duplicates the effort required by the insurer; eliminate any state law requirement that requires paper delivery			May require amending existing state laws; consumers would have to affirmatively opt-out of electronic communications
Enrollment in Employer Group Coverage	This topics centers on enrollment in employer group coverages, particularly as it relates to various employer policyholder and/or vendor electronic enrollment platforms		Product filings can be very complex; different state disclosure, signature or delivery requirements; age-based requirements		Complexity of filings; forms within a policy or contract may differ on what can/cannot be shared electronically; e-delivery requirements are difficult to implement due to state variations
UETA excludes delivery of notices of cancellation or	Similar to the lapse/termination notices topic in the e-notices category above, this topic	Identify which states still have these requirements;			

termination of life insurance benefits	focuses on the electronic delivery of notices of cancellation or termination of life insurance benefits	amend state law to remove exclusion			
Anti-Rebating Laws	Recently, the NAIC approved amendments to the Unfair Trade Practices Model Law regarding anti-rebating. The industry raised concerns that jurisdictions have not yet adopted the amendments.	Prior request to amend Unfair Trade Practices Model Law		Encourage adoption of the newest language contained in the Unfair Trade Practices Model Law	

(4) CLAIMS

The fourth category is claims. This category focuses on insurance claims. The topics in the claims category are claims processing and minimize/modernize licensing requirements related to claims adjustment.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Claims Processing	After a policyholder reports a loss, the use of drones may help expedite the processing of the insurance claim	Allow for the use of drones		Express statutory or regulatory authority for the use of such technology	Concern for accuracy
Minimize/Modernize licensing requirements related to claims adjustment	The industry raised the potential opportunity to minimize/modernize licensing requirements related to claims adjustment.			Amend statutes to allow digital adjustment of claims; eliminate licensing requirements or provide option for a business license (as opposed to individual licenses); allow online licensing courses; allow fingerprints submitted in one state to be valid in all states for a set amount of time	

(5) OTHER

The fifth category is other. This category focuses on other topics that did not fit into any of the four categories above. The topics in the other category are the use of artificial intelligence, different design element requirements for forms/documents and online materials, advertising approval, and the use of telematics.

Topic	Explanation of Topic	Industry Request	Concern With Industry Request	Possible Solutions	Possible Complications
Use of Artificial Intelligence	Artificial intelligence is a technology that enables computer systems to accomplish tasks that typically require a human's intelligent behavior. The use of AI has increased exponentially across all industries, including the insurance industry.	Statutory modifications expressly providing for use of this technology			Duplication of H Committee work
Different design element requirements for forms/documents and online materials	The industry raised concerns regarding the various requirements across the states for forms/documents and online materials.	Various requirements across the states are difficult to implement	Document design/website/font size/formatting rules differ	NAIC should work with states to seek uniform standards; standards would allow companies to follow well-defined rules and departments to enforce violations	
Advertising Approval	The industry raised concerns regarding states' review and approval of long-term care insurance advertising materials.	Different states mandate department reviews and approval of advertising materials related to LTC; make them uniform, take departments out of the business of editing company documents	How many states require these filings and how many are exempt?	NAIC should work with states to seek uniform standards	Duplication of Long-Term Care Task Force work
Use of Telematics	Telematic devices measure elements of interest to underwriters, including miles driven, time of day, and where the vehicle is driven. Like AI, the use of telematics has increased exponentially across the insurance industry.	Statutory modifications expressly providing for use of this technology for underwriting and rating purposes			Compliance reviews and internal controls; duplication of H Committee work