

**ELECTRONIC INSURANCE NOTICES AND DOCUMENTS WORKING GROUP
MINUTES OF SEPTEMBER 16, 2013 MEETING
KING KALAKAUA BUILDING
QUEEN KAPIOLANI CONFERENCE ROOM**

Present: Martha Im, Insurance Division; Gordon Ito, Insurance Commissioner; Isaac Kosasa, Hawaii Insurers Council (HIC); Ann Le Lievre, Insurance Division; Lori Lum, Watanabe Ing LLP, representing Property Casualty Insurers Association of America (PCI); Alison Powers, Hawaii Insurers Council; Dan Purcell, member of public; Bob Toyofuku, Commission to Promote Uniform Legislation; Tiffany Yajima, Ashford & Wriston LLLP.

Conference Call Participants: Alex Hageli, PCI; Robert Joslin, Hawaii Public Adjusters; Bob Nash, State Farm Insurance Companies (State Farm); David Leifer, American Council of Life Insurers (ACLI); Ben Potter, Progressive; Mark Sektnan, PCI; Joann Waiters, ACLI; Josh Zielaskiewicz (Progressive).

1. Call to order; public notice

Insurance Commissioner Gordon Ito called the meeting to order at 10:04 a.m. Public notice for this meeting was timely filed with the Lieutenant Governor's office on September 5, 2013.

Commissioner Ito opened the meeting by thanking members and participants for attending the meeting, and also reminded members that the Working Group is following the Sunshine Law. Discussion among members should occur in open hearing.

2. Approval of minutes of September 3, 2013 meeting

A draft of the minutes of the September 3, 2013 meeting was previously circulated to members for their review. A reminder to the members and participants that meeting minutes should be an accurate recording of what was stated at a particular meeting. Amendments to meeting minutes are to correct inaccuracies in the draft minutes. If items need further clarification, a discussion at the current meeting would be the appropriate course of action rather than modification or amendment of previous meeting minutes.

Alison Powers stated a correction was needed on page 3, last paragraph, second line: delete "opt-in" and replace with "opt-out", and correction on page 5, paragraph 5, third sentence, beginning with "For the": delete "opt-out" and insert "opt-in" in the draft September 3, 2013 minutes.

Robert Joslin stated a correction was needed on Page 3, first paragraph, first line: delete “receives” and insert “is supposed to receive”.

Bob Toyofuku moved, and Allison Powers seconded, to approve the minutes of the September 3, 2013 meeting as amended. The motion passed unanimously.

3. Discussion of Materials

Documents were circulated to the members of the working group, as well as other participants in advance of today’s meeting. A copy of the following documents circulated are attached hereto and incorporated as part of the meeting minutes: Progressive Powerpoint: “Hawaii Policy Posting Walkthrough, - How the new law would work in practice” [with attachments as follows: Hawaii Auto Policy; Non-Owner Endorsement; Pet Injury Endorsement; Hawaii Declarations Page], attached as Exhibit A; E-SIGN Public Law 106-229, attached as Exhibit B; PCI e-Delivery/e-Posting – Laws & Regulations quick reference chart, attached as Exhibit C; 18 Del.C. §107, attached as Exhibit D; VA Code Ann. § 38.2-325, attached as Exhibit E; VA Code Ann. § 38.2-3301.1, attached as Exhibit F; Insurance Producers (Brokers/Agents) Requirements for Maintaining and Delivering Policy Documents, Hawaii Revised Statutes (HRS) §§ 431:9A-123 and 431:10-225, attached as Exhibit G.

Commissioner Ito stated that documents from Progressive were distributed prior to today’s meeting. It was requested that these materials be shared with the working group to facilitate discussions as to how consumers are given information regarding electronic election of documents and notices. The working group was agreeable to taking Progressive’s materials out of the meeting agenda order and going through the power point presentation titled “Hawaii Policy Posting Walkthrough”. Josh Zielaskiewicz of Progressive was the presenter.

A. Progressive’s “Hawaii Policy Posting Walkthrough”

Josh Zielaskiewicz explained that this was a legislative effort for Progressive in approximately 11 or 12 states. Progressive wanted to dramatically reduce the amount of paper contracts it sent out each year. The use of electronic documents or notices is limited to generic policy forms or what is normally provided to an entire class of insured in Hawaii.

Progressive wanted to post on the internet documents that could be accessed by anyone, anytime, anywhere, including the consumer who is looking for a quote on a policy, as well as Progressive’s insured. Different methods to access one’s documents, itemized on the declarations page, include phone, internet, or written request via mail.

If a policy is changed, either at renewal or anytime, a consumer will receive notice in the same manner they receive other notices. If the consumer requests documents by mail, they will receive their notice in the mail. If the consumer requests electronic copies by email, their notice will be sent by email. Policy forms are archived by Progressive for 5 (five) to 7 (seven) years, depending on the state's retention requirement, so the insured will have access to this document at any time.

Public policy considerations for electronic transmission or posting of documents include: 1) an efficient way for an insurer to comply with its legal obligations when a policy is issued; and 2) hard copies mailed are ignored and not read by the policyholder, based on Progressive's feasibility studies. These are contracts of adhesion, not negotiated, a standard form policy. Hawaii's UETA has shown to be inefficient for reducing paper copies. An insurer saves a little, but not significant, amount. Providing an electronic standard policy, versus printing and mailing a copy of the policy form in the same envelope as the declarations page, would save approximately \$0.40. It costs the insurer more to build the infrastructure to email the documents and notices. Josh Zielaskiewicz noted the \$0.40 cost was solely applicable to Progressive as he did not know the savings costs for other carriers.

Endorsements that change the policy in a material way will continue to be mailed to the policyholder. Those who elect for electronic documents and notices will also be given notice of material changes.

Page 10 of the power point states the benefits to the consumer to include: increased transparency; cost savings; availability of policy on demand, even if documents are lost in a fire or flood, or if involved in litigation, an attorney may access the documents immediately; green considerations by saving paper, electricity, fossil fuels and landfill space; and the searchable format. Progressive is building the infrastructure now. Virginia and Michigan passed respective laws last year allowing for electronic notices and documents.

Bob Toyofuku acknowledged that attorneys can easily obtain copies on an insurer's website. He asked if documents are archived for five (5) to seven (7) years, after seven (7) years, can an insured or their attorney obtain continued access to the policy. Progressive stated the options for obtaining a policy include: the Department of Insurance which has copies of Progressive's policies, and Progressive also retains their policy copies indefinitely. Josh Zielaskiewicz shared that Progressive's older policies may take time to retrieve, but will always be available to the policyholder.

Bob Toyofuku then asked about a hypothetical consumer that will not access a computer. If insurers are posting the standard form policy on their website, how does this consumer obtain a copy of the standard form policy? Josh

Zielaskiewicz said he has an 85 year old grandmother who doesn't have a computer, won't go to the library, and won't ask her children or grandchildren to access their computers to obtain her policy. To ensure individuals such as the 85 year old grandmother can get a paper copy, there are three (3) ways to obtain a paper copy: 1) call the insurer's 1-800 phone number, accessible 24 hours a day/7 days a week and request a paper copy; 2) call the agent and obtain a paper copy; or 3) write a letter to the insurer to request a paper copy mailed to them. These options are stated on the declarations page provided to the policyholder.

For the individual who does not have an agent and purchases their policies by phone directly from the insurer, once they receive the declarations page, they can call the insurer directly and obtain a copy of the policy. Concern was again voiced about the delay in receiving a hard copy of a policy or the declarations page as insured in Hawaii may not receive their copies for two (2) to three (3) weeks from the time of purchase. With electronic posting, consumers would be able to see the terms of the policy long before they otherwise would if awaiting a paper copy in the mail.

Commissioner Ito focused discussion on defining the process by which a consumer is notified as to obtaining copies of standard policies and forms that would be posted online, especially for those individuals who have no access to a computer and decide to purchase their insurance over the phone. Would a consumer be provided an explanation that they will not receive a paper copy of the standard policy and if they want a paper copy, would they need to opt-out of the electronic posting of standard forms and policies? Josh Zielaskiewicz stated this is not written into the bill, but that this is something insurers can do. Commissioner Ito shared that personally he believes electronic insurance documents and notices are a viable option, however, he wants to ensure that consumer protections are in place and there is a clear understanding that consumers need to opt-out of having standard policies and forms available on the web in order to receive a paper copy. Majority of consumers believe the declarations page is their policy.

Josh Zielaskiewicz stated UETA currently allows for consumers to opt-in and receive electronic documents. However, the take rates are low and it is difficult to explain why. He believes that an opt-out option would allow for greater reach of the policy. To be a paperless customer can be intimidating. Proposed language in House Bill 127, which if it had passed, would have made consumer requirements more cumbersome in that if a consumer agrees to electronic copies, they are routed to another site to confirm what documents they want to receive electronically. This becomes cumbersome for the consumer to navigate to more than one (1) site to make their election for electronic documents. Progressive and PCI already allow for consumers to opt-in to receive documents containing personally identifiable information in electronic format. However, Progressive's forms with personally identifiable information are not easily

accessible on the website in order to safeguard sensitive information. Consumers are sent a link to a safer website to ensure information remains protected. Progressive allows consumers to receive everything, except for notices of cancellations and nonrenewable of policies, in electronic format.

Progressive offers a discount for being a paperless customer and signing documents electronically. Commissioner Ito asked if Josh Zielaskiewicz could provide information regarding cost savings in other states for electronic notices and documents versus paper copies, as well as take up rates for electronic notices and documents. Josh Zielaskiewicz would provide statistics, although he cannot reveal too much because of proprietary reasons. However, he did not think the difference would be dramatic. The majority of Progressive's customers who bought directly from Progressive versus going through an agent chose the paperless format.

Robert Joslin brought up concerns regarding an immigrant consumer for whom English is their second language, who purchases insurance and only receives the declarations page. This consumer does not know or understand the standard policy form is automatically provided electronically on the insurer's website and that they must choose to receive a paper copy of the standard policy. This consumer will not know that the declarations page is not the policy, and they have the right to read the policy even if they do not understand it, or get someone to explain it to them. Robert Joslin also shared that he spoke with Tim Fox at JD Powers and Associates regarding the JD Powers and Associates survey referenced in a previous meeting for the assertion that policyholders preferred online and electronic dealings with insurance companies rather than postal mailings. Tim Fox stated surveys JD Powers and Associates have conducted do not necessarily reflect that policyholders prefer electronic and online communications with insurers. Robert Joslin feels there's a wall with the opt-in and opt-out. Alex Hageli stated that if the recommendation is for the consumer to opt-in to receive electronic notices and documents that contain personally identifiable information as well as those that are standard forms and policies, any proposed language regarding standard forms and policies should be dropped as it accomplishes nothing for the insurer.

4. Model Law and state laws regarding electronic notices

A. Model Law

Bob Toyofuku shared that he contacted the Minnesota Uniform Law Commissioner, who was unaware of Minnesota's electronic notices law so could not comment on it. Bob Toyofuku also contacted the chair of the original UETA drafting committee, who stated she is generally not against electronic transactions for insurance documents. Bob Toyofuku stated he will contact the chair again to expressly ask about the opt-in and opt-out provisions of the

industry Model Law previously distributed and will provide a report for the next meeting.

Alison Powers represented that HIC looked at Minnesota, Missouri, and Kansas laws and prefers Minnesota's law as it is the cleanest and closest to the industry Model Law.

B. Fees for paper copies

Bob Toyofuku referred to page 2 of the industry Model Law which allows for insurers to charge a fee for paper copies of documents. Josh Zielaskiewicz represented that Progressive does not charge for paper documents. Alison Powers added that in the Minnesota statute, for the opt-out language, insurers can provide a paper copy with no fees attached.

Both Progressive and State Farm do not charge a fee for paper copies if a consumer initially opts-in to receive documents electronically and later changes their mind. Alex Hageli is aware of two (2) companies that do charge for paper copies if the consumer wants paper copies, even for standard form policies that are initially available online and the consumer opts-out to receive paper copies. However, he is not sure if those insurers write policies in Hawaii and was therefore reluctant to name them.

Robert Joslin stated that he has had several conversations with other organizations on fee charges for paper copies. He is not opposed to a consumer opting in to receive electronic copies, but if that consumer later changes their mind and wants a paper copy, any charge for the paper copy should be comparable to the discount the consumer received for initially selecting electronic documents. Industry representatives had various comments regarding the fee including, only a nominal charge would likely be incurred, no fees would attach for standard forms and policies in hard copy, and when a system is set up for one (1) consumer to receive documents electronically, and then that consumer elects to now have documents in hard copy, the insurer incurs a cost for changing the system to reflect that one (1) individual's change in preference.

Josh Zielaskiewicz stated that the \$0.40 cost he quoted at the beginning of the meeting is the additional cost to the insurer for printing out a hard copy of the standard policy and including it with the declarations page that would be mailed to a policy holder. He acknowledged the point that it will cost the insurer more to print out and mail the standard policy after the system has already been programmed to deliver electronic copies for a particular policy holder.

Dan Purcell, member of the public, stated that document delivery in electronic format may effectively deny the consumer of access to their documents. While documents are searchable in PDF format, a less reputable agency that has an archaic system cannot access the PDF documents.

5. Discussion of materials distributed

A. PCI e-document summary

A copy of the PCI e-Delivery/e-Posting – Laws & Regulations quick reference chart was previously sent to all participants and is attached as Exhibit C to this meeting's minutes. Alex Hageli explained that the summary is specific to the Insurance Code and does not include UETA. If UETA was included, the first column would read "yes" with a few exceptions.

B. E-SIGN Law

A copy of the federal E-SIGN law was previously sent to all participants and is attached as Exhibit B to this meeting's minutes. There was no discussion on the E-SIGN law.

C. UETA

Alison Powers asked for clarification about the Hawaii UETA statute and if the exceptions for insurance electronic notices in HRS §489E-3(b)(3) were different for property and casualty than for life and health. Bob Toyofuku stated the statute is not clear in that it does not specify to what lines of insurance the exceptions apply. He will check in the committee reports if any exception is referenced.

David Leifer stated E-SIGN applies to life insurance. E-SIGN does not apply to cancellation and termination of health insurance or benefits, or life insurance benefits.

6. Industry and consumer perspective on use and transmission of electronic notices and documents.

As there has been sufficient input and discussion on this issue in past meetings, no further discussion was needed.

7. Report to the Legislature

A draft report from this Working Group will be due to the Legislature prior to the start of the 2014 session. The insurers favor the Model Law authored by the industry. PCI, State Farm, and HIC stated their preference for the Model Law.

Bob Toyofuku stated he will speak with other commissioners on the Hawaii Commission to Promote Uniform Legislation, and will relay any comments they may have. Further, he will speak with the chair of the original UETA drafting

group and ask for her input as to insurance documents and notices, specifically as to electronic delivery of cancellation and termination notices.

If the intent of the Working Group is to allow terminations and cancellations electronically in Hawaii, then the Hawaii UETA statute needs to be amended. Bob Toyofuku stated that a significant number of other commissioners who serve on their respective state's Commission to Promote Uniform Legislation would be opposed to having consumers sent notification of cancellations electronically. These commissioners fall more on the side that favors consumer protection, and that Bob Toyofuku also represents groups that would favor consumer protections.

Alex Hageli shared that he receives electronic notices for and pays most of his bills electronically, including his mortgage. Josh Zielaskiewicz stated that as more people receive documents electronically, the occasional mailing may be assumed to be junk mail and thrown out without being opened. Mark Sektnan stated that a non-response from a consumer regarding renewal of a policy would result in the communication being sent again. Josh Zielaskiewicz stated two (2) bounced emails from a consumer requesting electronic communications will result in a hard copy being mailed to the consumer until that consumer contacts Progressive and specifically requests electronic communications be started again.

Bob Toyofuku stated that the process and result from cancellation of insurance by electronic notice is very different than a situation where a consumer ignores or overlooks email notification of missed mortgage payments. If a consumer misses their mortgage payment, the bank cannot just take an individual's house. The bank must go through a foreclosure process before one loses their home. In the situation of cancellation of insurance, once the policy is cancelled, it's cancelled and the individual loses their insurance coverage.

Robert Joslin stated he is in favor of an opt-in, opt-in situation where all notices and documents are in paper form unless the consumer specifically requests electronic documents. He also advocates fees for papers copies be equitable with any discount for election of electronic copies. He believes while the industry is looking at the best case scenario when addressing electronic notices and documents, he must look at the worst case scenario for the consumer. He stated possibly amending HRS §§ 431:9A-123 and 431:10-225 would address the problem. Copies of HRS §§ 431:9A-123 and 431:10-225 were distributed in advance of today's meeting and are attached as Exhibit G to this meeting's minutes.

Commissioner Ito stated he was okay with moving towards electronic documents and notices, but finds the opt-out section of the Model Law problematic. He will state his concerns in the report to the Legislature.

Bob Toyofuku stated if anyone is advocating for cancellation or termination electronically, it is not necessarily a good idea for the consumer. While he supports electronic documents, he believes there should be conditions that protect the consumer.

David Leifer requested that any changes to the law allowing for electronic notices and documents be applicable to all lines of insurance.

There was also clarification that any references to a Model Law are to the industry Model Law dated March 25, 2013 circulated previously. There is no National Association of Insurance Commissioners (NAIC) Model Law addressing electronic insurance notices and documents that the Working Group is aware of.

8. Submission of testimony by interested parties and members of the public

Interested parties and members of the public may submit testimony to the Working Group by: mail (335 Merchant St #213, Honolulu, HI 96813), fax (808-586-2806), or email (ins@dcca.hawaii.gov).

9. Next meeting

The scheduling for the next meeting will be coordinated by email. A draft report will be circulated prior to the next meeting for discussion.

10. Adjournment

The meeting was adjourned at 11:54 a.m.

Hawaii Policy Posting Walkthrough

How the new law would work in
practice

What is Policy Posting

- In lieu of mailing or delivery an insurer may post generic policy and endorsement forms on its public website
- Policy documents containing personal information may not be posted
- With each declarations page the insured is provided with:
 - A list of the policy and endorsements purchased
 - The internet address where the forms are posted
 - Instructions on how to get a free paper copy of the forms
- The same information is provided with notices of policy changes
- Posted policy forms are archived

Why Posting is Good Public Policy

- Policy posting is an efficient way for an insurer to comply with its legal obligations when a policy is issued
- The vast majority of policyholders have no interest in receiving or reading their policy documents
- The important document is the declarations page
- Consumers that want hard copy are able to easily opt out of this process

Why Posting is Good Public Policy

- An opt in approach is inefficient and unnecessary with basic policy forms
 - The forms are generic with no personal information
 - The terms and conditions of the policy are not negotiated by the consumer
 - The forms are reviewed and approved by the Department of Insurance
 - The forms are always available for review if and when the need arises
 - The opt in process is cumbersome and under existing law insurers can deliver policies and endorsements electronically on an opt in basis

Why Posting is Good Public Policy

- There are clear environmental benefits
- Provides a simple mechanisms for insureds to find policy and endorsements on the insurer's web site or request paper copies.
- Insureds and other consumers can read, search, print, and save policy and endorsement forms before, during, and after their individual policy period

Which documents will be posted?

Only policy contract booklets and endorsements that are:

- Filed and approved.
- Contain no personal information, policy limits, premium information, or deductibles.
- Apply broadly to all insureds purchasing a policy in a given time period.

Sample Policy Contract Specimens—Note that this will look nearly the same for each state.

9610D HI 0908



HAWAII
AUTO POLICY

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Which Documents will be posted, continued.

In addition to the standard policy contract, the endorsements pertaining to a particular policy will also be posted. These items merely contain the terms and conditions that govern the insurance policy. They do not contain any information specific to a particular insured or the amounts of coverage they have purchased. Applications, declarations pages, and ID cards will not be posted in this manner.

Right: an endorsement that adds Pet Injury Coverage to the insured's policy.

Policy number: - Policy number -
- Member First Full Name -
- Second Name First Full Name -
Page 19 of 28

Pet Injury Coverage Endorsement

Your Personal Auto Policy is amended as follows:

1. If you have purchased both Collision coverage and "Other than Collision" coverage for at least one of "your covered autos" under your policy, Pet Injury coverage is added to Part D - Coverage For Damage To Your Auto:

INSURING AGREEMENT - PET INJURY COVERAGE
If "your pet" sustains injury or death while inside "your covered auto" or "non-owned auto" at the time of a loss covered under "collision" or "other than collision" coverage, we will provide:

1. up to \$1,000 for reasonable and customary veterinary fees incurred by you or a "family member" if "your pet" is injured in, or as a direct result of, the covered loss; or
2. a \$1,000 death benefit if "your pet" dies in, or as a direct result of, the covered loss, less any payment we made toward veterinary expenses for "your pet".

In the event of a covered loss due to theft of "your covered auto" or "non-owned auto", we will provide the death benefit provided "your pet" is inside the auto at the time of the theft and "your pet" is not recovered.

ADDITIONAL DEFINITION
The following definition applies to this coverage:
"Your pet" means any dog or cat owned by you or a "family member".

LIMITS OF LIABILITY
The following additional Limits of Liability apply to Pet Injury coverage:

1. The most we will pay for all damages in any one loss is a total of \$1,000 regardless of the number of dogs or cats involved.
2. If "your pet" dies in, or as a result of, a covered loss, we will provide a death benefit of \$1,000, less any payment we made toward veterinary expenses for "your pet".
3. No deductible shall apply to this coverage.

All other terms, limits and provisions of this policy remain unchanged.

Form ZS38 VA (01/09)

How will insureds find their documents on the web site?

All forms other than the standard policy contract and endorsements will be provided to the insured in the manner they normally receive them from the insurer—whether by U.S. Mail, from their agent, or electronically. The customer’s preferred method will not change unless the insured requests such a change.

Under the law, insurers posting standard policy contracts and endorsements will be required to clearly describe the policy contract booklet and endorsements on the insured’s dec page. The dec page must also tell the insured where to find the posted documents and give them a method to request paper copies.

For illustrative purposes, the following disclosure could appear on the dec page (shown at right):

Your policy forms

The terms and conditions of your Progressive Direct auto insurance policy are contained in the following policy form and endorsements:

- 9610D (09/08) Progressive Direct Auto Policy
- Z538 (10/08) Pet Injury Coverage Endorsement
- Z194 (09/08) Named Non-Owner Coverage Endorsement

You can view, print, and save your policy and endorsements at www.progressive.com/hawaii/forms

If you would like to receive paper copies of these forms mailed to you free of charge, you may request them by calling 1-800-PROGRESSIVE, online by logging into your policy at www.progressive.com, or by mailing us at Customer Service, 6300 Wilson Mills Rd., Mayfield Village, OH 44143.

PROGRESSIVE
P.O. BOX 31260
TAMPA, FL 33631

PROGRESSIVE
DIRECT

Policy Number: 71502642-3
Underwritten by:
Progressive Direct Insurance Co
November 15, 2012
Policy Period: Dec 12, 2012 - Jun 12, 2013
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progressive.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-776-4737
For customer service and claims service,
24 hours a day, 7 days a week.

Auto Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.
Your coverage begins on December 12, 2012 at 12:01 a.m. This policy expires on June 12, 2013 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle. The policy contract is form 9610D AK (09/05). The contract is modified by forms Z445 AK (11/08) and Z538 (10/08).

Drivers and household residents Additional information
JOE POLICYHOLDER Named insured

Outline of coverage

1998 Pontiac Grand AM SE CP
VIN 1G2NE12T6WC72168
Primary use of the vehicle: Commute

	Limits	Deductible	Premium
Liability To Others	\$50,000 each person/\$100,000 each accident		\$497
Bodily Injury Liability	\$50,000 each person		
Property Damage Liability	\$50,000 each accident		
Uninsured/Underinsured Motorist	\$50,000 each person/\$100,000 each accident		85
Uninsured/Underinsured Motorist Property Damage	\$25,000 each accident	\$250	26
Medical Payments	\$5,000 each person		61
Total premium for 1998 Pontiac			\$669

1990 Chevrolet Lumina
VIN 2G1WL14T8L9254828
Primary use of the vehicle: Pleasure

	Limits	Deductible	Premium
Liability To Others	\$50,000 each person/\$100,000 each accident		\$372
Bodily Injury Liability	\$50,000 each person		
Property Damage Liability	\$50,000 each accident		
Uninsured/Underinsured Motorist	\$50,000 each person/\$100,000 each accident		85
Uninsured/Underinsured Motorist Property Damage	\$25,000 each accident	\$250	26
Medical Payments	\$5,000 each person		48
Total premium for 1990 Chevrolet			\$531

Form 640B AK (11/08)

Insureds will still receive notice of changes to their policy contracts and new endorsements

- If the insurer is changing the terms of its standard policy contracts or endorsements, it will be required to issue a notice to the insured of those changes, in the manner the insured prefers. If the insured normally receives notices in the mail, the notice will be delivered in the mail.
- Insureds will not be expected to continually check the insurer's website for changes to their policy. The insurer will let them know.
- The notice, like the one on the right will also include information on where to access the new policy contract or endorsement and how the insured can request a paper copy.



What are the benefits for consumers?

- Increased transparency—once broadly adopted, public posting will allow consumers to compare products before purchasing them.
- Cost savings—in an ultra-competitive insurance market, any savings insurers can create through new efficiencies will be passed on to consumers.
- Availability on demand—insureds can access their policy contracts and endorsements online or request paper copies anytime.
- Green considerations—policy contracts can extend beyond fifty pages in length. Dramatically reducing the number of paper policies mailed to insureds can save a considerable amount of resources.
- The format in which the policy contract and endorsement will be posted can provide additional benefits for the insureds.
 - They can be searched.
 - Text can be enlarged to make them easier to read and more accessible for sight impaired customers.

PUBLIC LAW 106-229—JUNE 30, 2000

**ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT**

EXHIBIT B

Public Law 106-229
106th Congress

An Act

June 30, 2000
[S. 761]

To facilitate the use of electronic records and signatures in interstate or foreign commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Electronic
Signatures in
Global and
National
Commerce Act.
Contracts.
15 USC 7001
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Electronic Signatures in Global and National Commerce Act”.

**TITLE I—ELECTRONIC RECORDS AND
SIGNATURES IN COMMERCE**

15 USC 7001.

SEC. 101. GENERAL RULE OF VALIDITY.

(a) IN GENERAL.—Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) PRESERVATION OF RIGHTS AND OBLIGATIONS.—This title does not—

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) CONSUMER DISCLOSURES.—

(1) CONSENT TO ELECTRONIC RECORDS.—Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever

is required) such information satisfies the requirement that such information be in writing if—

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer—

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms 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; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record—

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) OTHER RIGHTS.—

(A) PRESERVATION OF CONSUMER PROTECTIONS.— Nothing in this title affects the content or timing of any disclosure or other record required to be provided or made

available to any consumer under any statute, regulation, or other rule of law.

(B) VERIFICATION OR ACKNOWLEDGMENT.—If a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) EFFECT OF FAILURE TO OBTAIN ELECTRONIC CONSENT OR CONFIRMATION OF CONSENT.—The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) PROSPECTIVE EFFECT.—Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) PRIOR CONSENT.—This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) ORAL COMMUNICATIONS.—An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) RETENTION OF CONTRACTS AND RECORDS.—

(1) ACCURACY AND ACCESSIBILITY.—If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) EXCEPTION.—A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) ORIGINALS.—If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided,

available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) CHECKS.—If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) ACCURACY AND ABILITY TO RETAIN CONTRACTS AND OTHER RECORDS.—Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) PROXIMITY.—Nothing in this title affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) NOTARIZATION AND ACKNOWLEDGMENT.—If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that 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 other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) ELECTRONIC AGENTS.—A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

(i) INSURANCE.—It is the specific intent of the Congress that this title and title II apply to the business of insurance.

Applicability.

(j) INSURANCE AGENTS AND BROKERS.—An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if—

- (1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;
- (2) the agent or broker was not involved in the development or establishment of such electronic procedures; and
- (3) the agent or broker did not deviate from such procedures.

SEC. 102. EXEMPTION TO PREEMPTION.

15 USC 7002.

(a) IN GENERAL.—A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law—

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this title or title II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if—

(i) such alternative procedures or requirements are consistent with this title and title II; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

(b) EXCEPTIONS FOR ACTIONS BY STATES AS MARKET PARTICIPANTS.—Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) PREVENTION OF CIRCUMVENTION.—Subsection (a) does not permit a State to circumvent this title or title II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

15 USC 7003.

SEC. 103. SPECIFIC EXCEPTIONS.

(a) EXCEPTED REQUIREMENTS.—The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

(b) ADDITIONAL EXCEPTIONS.—The provisions of section 101 shall not apply to—

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of—

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) 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;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) REVIEW OF EXCEPTIONS.—

(1) EVALUATION REQUIRED.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to the Congress on the results of such evaluation.

Deadline.
Reports.

(2) DETERMINATIONS.—If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 101 to the exceptions identified in such finding.

SEC. 104. APPLICABILITY TO FEDERAL AND STATE GOVERNMENTS.

15 USC 7004.

(a) FILING AND ACCESS REQUIREMENTS.—Subject to subsection (c)(2), nothing in this title limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) PRESERVATION OF EXISTING RULEMAKING AUTHORITY.—

(1) USE OF AUTHORITY TO INTERPRET.—Subject to paragraph (2) and subsection (c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 101 with respect to such statute through—

(A) the issuance of regulations pursuant to a statute;

or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency).

This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) LIMITATIONS ON INTERPRETATION AUTHORITY.—Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 101 from adopting any regulation, order, or guidance described in paragraph (1), unless—

(A) such regulation, order, or guidance is consistent with section 101;

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that—

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose—

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) PERFORMANCE STANDARDS.—

(A) ACCURACY, RECORD INTEGRITY, ACCESSIBILITY.—Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 101(d).

(B) PAPER OR PRINTED FORM.—Notwithstanding subsection (c)(1), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to require retention of a record in a tangible printed or paper form if—

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and

(ii) imposing such requirement is essential to attaining such interest.

(4) EXCEPTIONS FOR ACTIONS BY GOVERNMENT AS MARKET PARTICIPANT.—Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) ADDITIONAL LIMITATIONS.—

(1) REIMPOSING PAPER PROHIBITED.—Nothing in subsection (b) (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) CONTINUING OBLIGATION UNDER GOVERNMENT PAPERWORK ELIMINATION ACT.—Nothing in subsection (a) or (b) relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105-277).

(d) AUTHORITY TO EXEMPT FROM CONSENT PROVISION.—

(1) IN GENERAL.—A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

(2) PROSPECTUSES.—Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 101(c) any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940, or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act of 1933.

Deadline.
Regulations.

(e) ELECTRONIC LETTERS OF AGENCY.—The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

SEC. 105. STUDIES.

(a) DELIVERY.—Within 12 months after the date of the enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12-month period.

Deadlines.
15 USC 7005.
Mail.

Reports.

(b) STUDY OF ELECTRONIC CONSENT.—Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

Reports.

Public
information.

15 USC 7006.

SEC. 106. DEFINITIONS.

For purposes of this title:

(1) **CONSUMER.**—The term “consumer” means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) **ELECTRONIC.**—The term “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) **ELECTRONIC AGENT.**—The term “electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) **ELECTRONIC RECORD.**—The term “electronic record” means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) **ELECTRONIC SIGNATURE.**—The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(6) **FEDERAL REGULATORY AGENCY.**—The term “Federal regulatory agency” means an agency, as that term is defined in section 552(f) of title 5, United States Code.

(7) **INFORMATION.**—The term “information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) **PERSON.**—The term “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) **RECORD.**—The term “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) **REQUIREMENT.**—The term “requirement” includes a prohibition.

(11) **SELF-REGULATORY ORGANIZATION.**—The term “self-regulatory organization” means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

(12) **STATE.**—The term “State” includes the District of Columbia and the territories and possessions of the United States.

(13) **TRANSACTION.**—The term “transaction” means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct—

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

SEC. 107. EFFECTIVE DATE.

15 USC 7001
note.

(a) **IN GENERAL.**—Except as provided in subsection (b), this title shall be effective on October 1, 2000.

(b) **EXCEPTIONS.**—

(1) **RECORD RETENTION.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), this title shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by—

(i) a Federal statute, regulation, or other rule of law, or

(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

(B) **DELAYED EFFECT FOR PENDING RULEMAKINGS.**—If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) with respect to a requirement described in subparagraph (A), this title shall be effective on June 1, 2001, with respect to such requirement.

(2) **CERTAIN GUARANTEED AND INSURED LOANS.**—With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act.

(3) **STUDENT LOANS.**—With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to title IV of the Higher Education Act of 1965, section 101(c) of this Act shall not apply until the earlier of—

(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965; or

(B) one year after the date of enactment of this Act.

TITLE II—TRANSFERABLE RECORDS

SEC. 201. TRANSFERABLE RECORDS.

15 USC 7021.

(a) **DEFINITIONS.**—For purposes of this section:

(1) **TRANSFERABLE RECORD.**—The term “transferable record” means an electronic record that—

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) OTHER DEFINITIONS.—The terms “electronic record”, “electronic signature”, and “person” have the same meanings provided in section 106 of this Act.

(b) CONTROL.—A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) CONDITIONS.—A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that—

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as—

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) STATUS AS HOLDER.—Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 3-302(a), 9-308, or revised section 9-330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) OBLIGOR RIGHTS.—Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) PROOF OF CONTROL.—If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(g) UCC REFERENCES.—For purposes of this subsection, all references to the Uniform Commercial Code are to the Uniform Commercial Code as in effect in the jurisdiction the law of which governs the transferable record.

SEC. 202. EFFECTIVE DATE.

15 USC 7021
note.

This title shall be effective 90 days after the date of enactment of this Act.

TITLE III—PROMOTION OF INTERNATIONAL ELECTRONIC COMMERCE

SEC. 301. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.

15 USC 7031.

(a) PROMOTION OF ELECTRONIC SIGNATURES.—

(1) REQUIRED ACTIONS.—The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.—The principles specified in this paragraph are the following:

(A) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(B) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(C) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(D) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

(b) CONSULTATION.—In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(c) DEFINITIONS.—As used in this section, the terms “electronic record” and “electronic signature” have the same meanings provided in section 106 of this Act.

TITLE IV—COMMISSION ON ONLINE CHILD PROTECTION

SEC. 401. AUTHORITY TO ACCEPT GIFTS.

Section 1405 of the Child Online Protection Act (47 U.S.C. 231 note) is amended by inserting after subsection (g) the following new subsection:

“(h) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real (including the use of office space) and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts or grants not used at the termination of the Commission shall be returned to the donor or grantee.”.

Approved June 30, 2000.

LEGISLATIVE HISTORY—S. 761 (H.R. 1714):

HOUSE REPORTS: No. 106-341, accompanying H.R. 1714, Pt. 1 (Comm. on Commerce) and Pt. 2 (Comm. on the Judiciary).

SENATE REPORTS: Nos. 106-131 (Comm. on Commerce, Science, and Transportation) and 106-661 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 145 (1999): Nov. 19, considered and passed Senate.

Vol. 146 (2000): Feb. 16, considered and passed House, amended, in lieu of H.R. 1714.

June 14, House agreed to conference report.

June 15, 16, Senate considered and agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 36 (2000):
June 30, Presidential remarks and statement.





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e-Delivery/e-Posting – Laws & Regulations*

STATE	E-DELIVERY	E-POSTING
Alabama	No	No
Alaska	No	Yes
Arizona	No	Yes
Arkansas	Yes (DOI bulletin)	No
California	No	No
Colorado	No	No
Connecticut	No	No
Delaware	Yes	No
D.C.	No	No
Florida	Yes (commercial only; policy only; opt-out)	Yes
Georgia	No	No
Hawaii	No	No
Idaho	Yes	No
Illinois	No	Yes
Indiana	No	No
Iowa	No	No
Kansas	Yes	Yes
Kentucky	Yes (DOI bulletin)	No
Louisiana	No	No
Maine	No	No
Maryland	Yes	No
Massachusetts	No	No
Michigan	No	Yes
Minnesota	Yes	Yes
Mississippi	No	No
Missouri	Yes	Yes
Montana	No	No
Nebraska	No	No

*The laws and regulations included within this chart have been enacted and promulgated specifically in regards to insurance. This chart does not include citation to generally applicable electronic commerce statutes such as E-SIGN and UETA.

Nevada	No	No
New Hampshire	No	No
New Jersey	No	No
New Mexico	No	No
New York	No	No
North Carolina	Yes	No
North Dakota	No	No
Ohio	No	No
Oklahoma	No	Yes
Oregon	No	No
Pennsylvania	No	No
Rhode Island	No	No
South Carolina	No	No
South Dakota	No	No
Tennessee	Yes (DOI bulletin)	No
Texas	Yes	Yes
Utah	No	No
Vermont	No	No
Virginia	Yes	Yes
Washington	No	No
West Virginia	No	No
Wisconsin	No	No
Wyoming	No	No

Total states w/e-Delivery: 13 out of 51
Total states w/e-Posting: 11 out of 51

e-Delivery refers broadly to the electronic delivery of any and all insurance documents (including policy, notices, bills) to policyholders who consent (i.e., opt-in) to receive such materials electronically.

e-Posting, or Posting Policies to the Internet, refers to the posting of policy forms and endorsements that do not contain personally identifiable information to the Internet and sending a link to the materials via e-mail to the policyholder in lieu of mailing paper copies to the policyholder. Provision of these materials via this method is made without the consent of the policyholder, and those policyholders wishing to receive paper copies must request such from their insurer (i.e., opt-out). E-Posting is easily confused with e-Delivery; however, there are distinct differences. E-Delivery refers to the electronic delivery of several types of documents and requires the policyholder’s consent; e-Posting is limited to policy forms and endorsement that contain no personally identifiable information and does not require the consent of the policyholder.

West's Delaware Code Annotated
Title 18. Insurance Code
Part I. Insurance
Chapter 1. General Definitions and Provisions (Refs & Annos)

18 Del.C. § 107

§ 107. Electronic notices and documents

Effective: May 22, 2012

[Currentness](#)

(a) In this section, the following words shall have the following meanings:

(1) “Delivered by electronic means” includes:

- a. Delivery to an electronic mail address at which a party has consented to receive notice; or
- b. Posting on an electronic network, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.

(2) “Party” means an applicant, an insured, or a policyholder.

(b) Subject to subsection (d) of this section, any notice to a party or any other document required under this title in an insurance transaction may be delivered by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act ([§ 12A-101 of Title 6](#), et. seq.).

(c) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under this title, including delivery by first class mail, certified mail, certificate of mail, or certificate of mailing.

(d) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

- a. Any right or option of the party to have the notice provided or made available in paper or another nonelectronic form.
- b. The right of the party to withdraw consent to have notice or a document delivered by electronic means and any fees, conditions, or consequences imposed in the event consent is withdrawn;

c. 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 parties' relationship;

d.1. 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

e. The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(3) The party:

a. Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

b. Consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies.

a. Provides the party with a statement of:

1. The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means;
2. The right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed under paragraph (d)(2)b. of this section; and

b. Complies with paragraph (d)(2) of this section.

(e) This section does not affect requirements related to content or timing of any notice or document required under this title.

(f) If a provision of this title requiring a notice or document to be provided to a party expressly requires verification or

acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with paragraph (d)(3)b. of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer.

(3) Failure by an insurer to comply with paragraph (d)(4) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(i) This section does not apply to a notice or document delivered by an insurer in an electronic form before May 22, 2012, to a party who, before that date, has consented to receive notice in an electronic form otherwise allowed by law.

(j) If the consent of a party to receive notice or document in an electronic form is on file with an insurer before May 22, 2012, the insurer shall notify the party of:

(1) The notices or documents that may be delivered by electronic means under this section; and

(2) The party's right to withdraw consent to have notices or documents delivered by electronic means.

(k)(1) Except as otherwise 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 may qualify as a notice or document delivered by electronic means for purposes of this section.

(2) If a provision of this title requires a signature or record 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 record or document.

(l) This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, [Public Law 106-229](#) [5 U.S.C. § 7001, et seq.], as amended.

(m) The provisions of this section shall apply to any regulatory requirement of or transaction with, the Department of Insurance which requires the filing or exchange of documents, notices, waivers, or forms.

Credits

Added by [78 Laws 2012, ch. 247, § 1, eff. May 22, 2012](#).

18 Del.C. § 107, DE ST TI 18 § 107

Current through [79 Laws 2013, chs. 1 – 82](#). Revisions by the Delaware Code Revisors were unavailable at the time of publication.

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West's Annotated Code of Virginia
Title 38.2. Insurance (Refs & Annos)
Chapter 3. Provisions Relating to Insurance Policies and Contracts (Refs & Annos)

VA Code Ann. § 38.2-325

§ 38.2-325. Electronic delivery

Effective: July 1, 2013

Currentness

A. If parties have agreed to conduct business by electronic means, and the agent of record, if applicable, has been so notified by the insurer, any information that is required to be delivered in writing may be delivered by (i) placing such information within the body of the electronic message; (ii) placing such information as an attachment to the electronic message that may be opened through the use of software that is readily available; (iii) displaying the information, or a clear and conspicuous link to the information, as an essential step to completing the transaction to which the information relates; or (iv) placing such information on the insurer's secured server and an electronic message is provided advising that insurance information or, when appropriate, time-sensitive insurance information has been placed on the insurer's secured server and is available for retrieval. This section should be construed to be consistent with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

B. If parties have agreed to conduct business by electronic means, and notice is provided by the insurer to the named insured pursuant to § 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, or 38.2-2212, an electronic notification shall also be provided to the agent of record of the named insured, if the named insured has an agent of record. Such electronic notification shall be transmitted to the agent of record as soon as practicable, but in no case more than 72 hours after electronic notice is transmitted to the named insured.

C. The insurer shall retain evidence of electronic notification to the agent of record for at least one year from the date of transmittal. Failure to provide such notice to the agent of record shall not be deemed to invalidate any electronic notice otherwise properly provided to the named insured. For purposes of this section, an electronic notification to the agent of record shall mean a copy of the actual notice, as set forth herein, or in the alternative, shall include the named insured's name, policy number, and termination date. Electronic notice need not be given to the agent of record if the agent (i) is an employee of the insurer, (ii) is a non-employee exclusive agent of the insurer, or (iii) has waived the receipt of such notices in writing.

D. Notwithstanding any other provision of law, any property and casualty insurance forms and endorsements that do not contain personally identifiable information may be posted to the insurer's publicly available website in lieu of any other method of delivery, provided that:

1. Such forms and endorsements are readily accessible on the insurer's website and that once such forms or endorsements are no longer used in the Commonwealth they are stored in a readily accessible archive portion of the insurer's website;
2. Such forms and endorsements are posted in such a manner that they may be readily printed and downloaded without charge and without the use of any special program or application that is not readily available to the public without charge;
3. The insurer provides written notice at time of the issuance of the initial policy forms and any renewal forms of a method by

which policyholders may obtain, upon request and without charge, a paper or electronic copy of their policy or contract; and

4. The insurer gives notice, in the manner it customarily communicates with a policyholder, of any changes to the forms or endorsements, and of the policyholder's right to obtain, upon request and without charge, a paper or electronic copy of such forms or endorsements.

<Subsec. E expires pursuant to the second enactment of [Acts 2013, c. 257](#) on Dec. 31, 2016>

E. The notification to an insurer of any change of the electronic address for the named insured shall be the sole responsibility of the named insured. The giving to the agent of record by any person of notice of such change of the named insured's electronic address shall not be deemed to be notice to the insurer unless it is specifically identified as a change and receipt has been accepted by the agent of record.

Credits

Added by [Acts 2009, c. 215](#). Amended by [Acts 2012, c. 293](#); [Acts 2013, c. 257](#).

VA Code Ann. § 38.2-325, VA ST § 38.2-325

Current through the End of the 2013 Reg. Sess. and the End of the 2013 Sp. Sess. I.

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West's Annotated Code of Virginia
Title 38.2. Insurance (Refs & Annos)
Chapter 33. Life Insurance Policies (Refs & Annos)
Article 1. Life Insurance Policies; Annuities (Refs & Annos)

VA Code Ann. § 38.2-3301.1

§ 38.2-3301.1. Delivery of individual life insurance policies

Effective: July 1, 2009

[Currentness](#)

A. For purposes of determining the commencement of the period during which the owner of an individual life insurance policy may exercise any statutory right to examine, surrender, or return the policy for cancellation, the date of delivery of the policy shall be:

1. The date of the signed receipt of delivery if the life insurance policy is (i) delivered by United States mail or other postal delivery system, or (ii) physically delivered to the owner by a representative of the insurer; or

2. The date of electronic transmission of the policy, provided the electronic transmission has been effected in accordance with this title and any other state or federal laws governing the electronic transmission of documents and information. The insurer shall retain evidence of electronic transmittal for the entire period of the life insurance policy.

B. If an insurer does not deliver a policy by the means set forth in subsection A, the burden of proof shall be on the insurer to establish that the policy was delivered, in the event of a dispute with the owner of the policy.

C. Notwithstanding subsections A and B, a policy shall be deemed to have been received by the owner of the policy as of the date of its issuance if six months have passed since its issuance and the owner of the policy has paid the premiums pursuant to the contract for those six months.

Credits

Added by [Acts 2009, c. 299](#).

VA Code Ann. § 38.2-3301.1, VA ST § 38.2-3301.1

Current through the End of the 2013 Reg. Sess. and the End of the 2013 Sp. Sess. I.

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Insurance Producers (Brokers/Agents) requirements for Maintaining and Delivering Policy Documents

HRS 431:9A-123 Records of insurance producer.

(a) Every insurance producer shall keep a record of all transactions consummated under the producer's license. The record required by this section shall be in a form organized according to class of insurance and shall include:

- (1) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and
- (2) Other and additional information as shall be customary or as may reasonably be required by the commissioner.

(b) All the records as to any particular transaction shall be kept in the licensee's office and shall be available and open to the inspection of the commissioner during business hours during the five years immediately after the date of the completion of the transaction.

(c) This section shall not apply to life or accident and health or sickness insurance if the records required of the insurance are customarily maintained in the offices of the insurer.

(d) This section shall not apply to motor vehicle or homeowners insurance if the records required of the insurance are *maintained electronically, accessible by the producer, and available within one business day.*

[L 2001, c 216, pt of §2; am L 2002, c 155, §34; am L 2011, c 7, §1]

HRS 431:10-225 Delivery of policy.

(a) Subject to the insurer's requirements as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance.

(Emphasis added)