



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

1200 West Third Street
Little Rock, AR 72201-1904
501-371-2820
FAX 501-371-2639

Thursday, May 16, 2002

BULLETIN NO. 6-2002

TO: ALL LICENSED INSURERS, AND OTHER REGULATED ENTITIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: REGULATORY ISSUES ASSOCIATED WITH THE PROVISION OF INSURANCE ELECTRONICALLY

As more and more insurance products and services are provided to consumers electronically, some legal and compliance issues for insurers, producers, and other regulated entities (hereinafter regulated entities) have arisen specific to this medium. This Bulletin is intended to provide guidance on a number of these issues. Further guidance will be provided as the medium and the structure of the industry's involvement with this medium evolves.

As a general guideline, the most important principle to consider when conducting business electronically is the idea of functional regulation. Regulatory requirements are not designed to discriminate against any medium, but are designed to accomplish a particular regulatory objective regardless of the medium used. Occasionally, medium specific references are contained in existing laws, rules and regulations. In these instances, the regulatory intent is to follow the objective of the law, rule or regulation, which may necessitate an interpretation of the existing law, rule or regulation to ensure that there is no discrimination for or against any particular media.

Electronic Signatures and Records

Last year, the State Legislature passed Act 905 of 2001, "The Uniform Electronic Transactions Act" ("UETA"). UETA requires the legal recognition of contracts formed through electronic records and electronic signatures if the parties consent to do so in such manner according to the terms of UETA. As of March 19, 2001, Arkansas expressly allows regulated entities to conduct business with consenting consumers electronically and provides for the legal recognition of electronic signatures, electronic records, and record retention related to electronic transactions.

The provisions of UETA apply to the creation of insurance contracts in this state. Under Section Seven (7) of UETA, "a contract may not be denied legal effect or enforceability solely because it is in electronic form," and UETA states that "a record or signature may not be denied legal effect or enforceability solely because it is in electronic form."

Although UETA does not list the commonly used methods of electronic communication in its broad definitions of "electronic record" and "electronic signature", these definitions would include electronic email and web or Internet based submissions between insurers and proposed insureds, for example, which are intended to be used to form insurance contracts.

The Department alerts regulated entities that insurance transactions may be formed electronically in this state and that the electronic communications or electronic signatures are governed under UETA. Insurers and agencies should go to Internet Web Site <http://www.arkleg.state.ar.us/ftp/acts/2001/htm/act905.pdf> to view a full copy of UETA, so that they will be alerted to the provisions and requirements in that Act.

Jurisdiction and Licensing

This state does not consider the mere maintenance or availability of a web site that contains insurance content, where the site owner has done nothing through such web site to purposely avail him/herself of the benefits of doing insurance business in this state, to alone constitute "doing business." Operating a web site, that includes

insurance advertising (regardless of whether compensation is received) does not constitute the transaction of insurance, provided that the operator does not otherwise solicit, sell or negotiate insurance. This state will not assert jurisdiction over a web site in cases where consumers who visit the site are provided reasonable access to information indicating that the advertised products and services are not available in this state.

Advertising

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

Format

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

Record Retention

Electronic record keeping is generally subject to the same timelines and other standards as record keeping in other media. This state finds that a regulated entity is in compliance with the state's record keeping requirements if it can reassemble the original information upon request. For example, in cases where there is no paper document, a regulated entity shall be in compliance if it can produce the information or data that accurately represents the record of communication between the policyholder and the regulated entity.

Delivery Requirements

For purposes of delivery and other communications required or permitted by this state and its attendant regulations, delivery and communication by electronic or other verifiable means shall not be precluded where agreed to by the parties involved. The burden is on the regulated entity to meet all existing requirements for delivery regardless of the method by which the policy or other record(s) are actually delivered to the recipient. Any policy, other record or communication delivered to an individual must be maintained by the regulated entity in accordance with applicable retention schedules and the regulated entity must be able, on demand, to provide an easily readable electronic or paper copy of the policy or document to the regulator or other party entitled to the information upon request. If a law or regulation requires a record, notice, or document to be attached to or enclosed with other records, documents, or notices, the law or regulation can be satisfied in the electronic environment so long as it is clear that the attached or enclosed record, document, or notice is logically associated with or linked to the same electronic record as the principal record, document, or notice.

Privacy

Privacy laws are equally applicable to all media, including electronic media.

If you have any questions regarding this Bulletin, please contact Associate Counsel Booth Rand, Legal Division, at 501-371-2820, or e-mail the Legal Division at insurance.legal@mail.state.ar.us.

MIKE PICKENS
INSURANCE COMMISSIONER - STATE OF ARKANSAS