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**Technical Advisory**

**TA 305**

**November 15, 2012**

**Subject: Guidelines for e-Signature and e-Delivery**

**Background:** Automation has impacted the modern world in countless ways. For insurance, the changes from paper-driven processes to electronic processes have produced speed, efficiency, and more than a few migraines. Among the many issues that have required attention are the myriad legal implications of electronic communications and electronic records. In particular, statutes, legal procedures and precedents have existed long before automated communications, and the effort to revise, replace or create new guidelines which reflect the use of electronic communications has been a work in progress for many years.

**Main Points:** In 1991, the National Conference of Commissioners on Uniform State Laws produced a model act, titled the Uniform Electronic Transactions Act (UETA). It has since been adopted by 47 states. Louisiana passed the **Louisiana Uniform Electronic Transactions Act (LUETA)** in 2001, and is found in statutes as 9:2601-9:2620. LUETA is not insurance-specific, but there are important provisions which apply to various insurance-related procedures. Here are several key sections.

**9:2604. Prospective application; exemption from preemption**

*A. This Chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 1, 2001.*

*B. This Chapter is intended and shall be construed to constitute an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws in 1999. If a court of competent jurisdiction finds that any provision of this Chapter is inconsistent with 15 U.S.C. 7002(a)(1) (the Electronic Signatures in Global and National Commerce Act), then any inconsistent provision is intended to comply with 15 U.S.C. 7002(a)(2)(A) and (B).*

**9:2605. Use of electronic records and electronic signatures; variation by agreement**

*B.(1) This Chapter applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means.*

**9:2607. Legal recognition of electronic records, electronic signatures, and electronic contracts**

- A. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- B. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- C. If a law requires a record to be in writing, an electronic record satisfies the law.
- D. If a law requires a signature, an electronic signature satisfies the law.

**9:2608. Provision of information in writing; presentation of records**

A. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt.

B. If a law, other than this Chapter, requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

- (1) The record must be posted or displayed in the manner specified in the other law.
- (2) Except as otherwise provided in Paragraph (D)(2) of this Section, the record must be sent, communicated, or transmitted by the method specified in the other law.

**9:2611. Notarization and acknowledgment**

If a law requires a signature or record 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 other applicable law, is attached to or logically associated with the signature or record.

**9:2612. Retention of electronic records; originals**

A. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

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

B. A requirement to retain a record in accordance with Subsection A of this Section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

C. A person may satisfy Subsection A of this Section by using the services of another person if the requirements of Subsection A of this Section are satisfied.

*D. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with Subsection A of this Section.*

*E. If a law requires 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 Subsection A of this Section.*

*F. A record retained as an electronic record in accordance with Subsection A of this Section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2001, specifically prohibits the use of an electronic record for the specified purpose.*

*G. This Section shall not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the jurisdiction of the agency.*

### **9:2613. Admissibility in evidence**

*In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.*

**[Comment on 9:2613.]** For additional information of the admissibility of electronic records in E&O proceedings, see IIABL Technical Advisory #139, posted on the IIABL web site ([www.iiabl.com](http://www.iiabl.com))

### **2615. Time and place of sending and receipt**

*A. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:*

*(1) Is addressed properly or is otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.*

*(2) Is in a form capable of being processed by that system.*

*(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.*

*B. Unless otherwise agreed between the sender and the recipient, an electronic record is received when it:*

*(1) Enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.*

*(2) Is in a form capable of being processed by that system.*

## **LUETA and Louisiana insurance statutes.**

While LUETA is not insurance-specific, it nonetheless impacts a large segment of an agency's business operations done through electronic means (electronic signatures, scanning, records retention, and so forth). But LUETA does not necessarily address or resolve all issues regarding the agency's communications with an insured. The Louisiana Insurance Code has specific requirements for communicating with insureds regarding certain information or procedures. And under **9:2608.B.** above, LUETA does not override requirements for method of communications which are specifically required in other statutes.

Accordingly, some Louisiana insurance statutes have been amended to permit electronic communications with, and delivery of certain information to, insureds. In 2011, the Louisiana Legislature passed HB 275 (Act 373), which amended two important insurance statutes to authorize electronic communication as a permissible means of complying with the statutes.

The pertinent parts of the two statutes that were amended in 2011 are as follows. The underlined language was added by HB 275 (Act 373).

### ***22:867. Must contain entire contract with exceptions.***

*A. No agreement in conflict with, modifying, or extending the coverage of any contract of insurance shall be valid unless it is in writing and physically made a part of the policy or other written evidence of insurance, or it is incorporated in the policy or other written evidence of insurance by specific reference to another policy or written evidence of insurance. This Section shall not apply to contracts as provided in Subpart C of Part IV of this Chapter.*

*B. The provisions of this Section shall apply where a policy or other written evidence of insurance is coupled by specific reference with another policy or written evidence of insurance in existence as of the effective date or issued thereafter.*

*C. Any written agreement in conflict with, modifying, or extending the coverage of any contract of insurance shall be deemed to be physically made a part of a policy or other written evidence of insurance, within the meaning of this Section, whenever such written agreement makes reference to such policy or evidence of insurance and is sent to the holder of such policy or evidence of insurance by United States mail, postage prepaid, at such holder's last known address as shown on such policy or evidence of insurance, by electronic transaction in accordance with the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq., or is personally delivered to such holder.*

### ***22:873. Delivery of policy***

*A. Subject to the insurer's requirements as to payment of premium, every policy shall be delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance. Delivery may be by the United States Postal Service, personal delivery, private courier, or by electronic transaction in accordance with the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.*

*B. In the event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy, or memorandum thereof setting forth the type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. Delivery may be by the United States Postal Service, personal delivery, private courier, or by electronic transaction in accordance with the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.*

It is important to note that HB 275 (Act 373) did not make any changes to the Louisiana insurance statutes regarding cancellation or nonrenewal notifications to the insured. In the various cancellation/nonrenewal statutes, the typical requirement calls for such notices to be “*mailed or delivered to the mailing address shown on the policy.*”

### **LUETA v ESIGN.**

On June 30, 2000, President Clinton signed the Electronic Signatures in Global and National Commerce Act – known as ESIGN. In keeping with the theme of the new law, he digitally signed the law using a smart card encrypted with his signature. ESIGN and UETA have many similarities, and some differences. Of principal importance is that ESIGN is a federal law which applies to all 50 states, while UETA is a model act which states can voluntarily adopt, including making amendments to the model act. Thus, Louisiana’s LUETA is not necessarily exactly like the version passed by the other 46 states that have some form of the UETA model act.

### **New report from ACORD: “Guidelines for e-Signature and e-Delivery in the Insurance Business.”**

On October 11, Jeff Yates, Executive Director of IIABA’s Agents Council for Technology (ACT), distributed this ACORD report to state associations. His cover memo below provides a very informative summary of the 13-page report, including comparisons between state UETA laws and ESIGN. The full ACORD report is attached to this Technical Advisory.

### **Catalyst for Agency, Carrier and Vendor Action**

I hope this excellent report will serve as a catalyst for agencies to incorporate electronic signatures and e-delivery of electronic documents into their workflows in order to deliver a better customer experience. I urge carriers to encourage their agencies to implement these improved workflows and to provide them with guidelines that outline their expectations with respect to electronic signatures, electronic documents and e-delivery of these documents. This will facilitate the ability of agencies to choose the vendors most appropriate for them and to implement these tools and workflows consistently across their agencies. Finally, I encourage agency management system vendors to consider providing electronic signature capabilities in

their systems, as well as to integrate with the electronic signature tools that are being used by their agency users.

### **Key Report Findings**

Below, are some of the key takeaways that I got from the Locke Lord report:

- Both the federal ESIGN law and UETA, the state model law adopted in 47 states, permit the use of electronic signatures, electronic delivery and electronic records to satisfy the “in writing” legal requirements for transactions and permit companies to satisfy statutory record retention requirements solely through the use of electronic records. The law firm’s report describes these two laws and how they interrelate when both are in effect in a particular state.
- The report contains a very helpful glossary that defines both electronic signatures and digital signatures. “Electronic signature” is the better term to use when referring to a consumer’s signing a document online, because a “digital signature” can also mean a method by which two devices establish a secure, recognized connection.
- ESIGN & UETA permit the use of electronic signatures and electronic records even for “special consumer disclosures,” which are those contained in the insurance code that specify that the disclosure be made to the consumer in writing and be signed by the consumer (such as disclosures about uninsured/underinsured motorist coverage). ESIGN and UETA also require that the electronic record of these “special consumer disclosures” be provided or made accessible to the consumer for later reference.
- The statutes require that the party initiating the e-signature and or e-delivery obtain both the consent of the consumer to complete the transaction electronically and the consent to receive disclosures electronically. Several states also require that the consumer reasonably demonstrate the ability to open an electronic record in the case of “special consumer disclosures,” so it is a good practice for the agent to determine this with the consumer at the time the agent receives the other consents from the consumer.
- In addition to getting the consumer’s consent to sign a document using an electronic signature, agencies need to employ a process to authenticate the identity of the signer. This is often done by requiring the signer to enter some information that only the particular consumer and agency know. The agency’s electronic signature tool should also create an audit trail surrounding the signature process and apply a Tamper Seal to the electronic document upon signing, so that it cannot be altered.
- ESIGN & UETA only provide legitimacy for electronic signatures, e-delivery and electronic documents. All of the other requirements relating to the execution of documents contained in a particular law must still be satisfied (e.g., requirement to verify or confirm consumer’s receipt, requirement that a certain election be made before completing an application, etc.).
- ESIGN and UETA allow companies to store electronic records in place of paper to satisfy their legal requirements to retain records in writing, provided the electronic records are stored accurately and are accessible on a timely basis to all persons who are legally entitled to access such records.

- Agencies and other companies that retain electronic documents are going to have to meet the same evidentiary tests that they must meet for written documents in order for them to be admissible in court. The report lays out these tests and agencies should carefully review them to make sure their “records custodian” with first-hand knowledge of their processes can testify that their electronic signatures and electronic documents meet each of these tests (p.7).
- ESIGN and UETA delineate a few types of documents as exceptions where electronic documents are not given legal recognition. The exceptions pertinent to the insurance business where the notices may not be given solely via e-delivery are ones for termination of health insurance or benefits of life insurance (excluding annuities). Also, the statutes do not provide legal recognition to electronic signatures and electronic records relating to wills, codicils or testamentary trusts.
- The report then includes a number of helpful “best practices” for agencies and carriers to consider as they design and implement effective electronic signature, e-delivery and electronic archival processes in their firms (p.7).

I encourage you to review the entire report for more details. I hope you find this ACORD commissioned report to be a helpful catalyst for your agency or company to support and implement these new tools and workflows in our distribution system, so that we can continue to enhance our efficiency and deliver a better customer experience.

Jeff Yates  
ACT Executive Director

**Necessary Action:** Distribute this Technical Advisory, along with the attached ACORD report, “Guidelines for e-Signature and e-Delivery in the Insurance Business,” to all appropriate agency staff.