

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF THE COMMISSIONER

Electronic Transactions

Proposed New Rules: N.J.A.C. 11:1-47

Proposed Amendments: N.J.A.C. 11:3-15.4, 15.7, and 47.3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 12A:12-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal No.: PRN 2004-351

Submit comments by: November 19, 2004 to:

Douglas A. Wheeler, Assistant Commissioner
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
E-mail: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

N.J.S.A. 12A:12-1 et seq., the “Uniform Electronic Transactions Act” (the Act), enacted June 26, 2001, is designed to ensure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures. The Act does not change the substantive rules of law that apply to such transactions. Accordingly, the objective of the Act is limited to providing that an electronic record of a transaction is equivalent to a paper record, and that an electronic signature will be given the same legal effect as a manual

signature. The statute is based on the final draft of a report issued by the National Conference on Uniform State Laws in July 1999. In addition, there is a Federal statute, 15 U.S.C. §§ 7001 et seq., which was enacted in 2000, which similarly provides for the validity of electronic records and signatures in commerce, including insurance transactions.

The Act essentially provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. In addition, a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. Finally, the Act provides that any law requiring a writing will be satisfied by an electronic record and that any signature requirement in any law will be met if there is an electronic signature. The Act sets forth details in order to enforce these general precepts, such as determining when information is legally delivered in electronic form, when delivery occurs, requirements for retention of electronic records, and procedures applicable to changes and errors in electronic records. The Act specifically does not apply to various actions, including the cancellation or termination of health insurance or life insurance policies.

Numerous statutes and rules governing transactions between insurers or producers and other parties reference submissions in writing, some of which also require a signature. In order to recognize and reflect the intent of the Legislature in authorizing electronic records and signatures in the creation of contracts, the Department of Banking and Insurance (Department) is proposing new rules and amendments to provide that whenever a statute or rule administered by the Department requires that a transaction between a carrier or producer and an applicant, insured or other party be in writing, with or without a signature, such transaction or record may be made electronically, provided the requirements of N.J.S.A. 12A:12-1 et seq. are satisfied. The term “carrier” includes: insurers; medical, hospital, dental and health service corporations;

dental plan organizations; and health maintenance organizations. In addition, the rules expressly do not apply to cancellation or terminations of any insurance coverages. While the Department notes that the Act limits such exceptions solely to cancellation and termination of health and life insurance benefits, the Department believes that it is reasonable and appropriate, and consistent with the intent of the Act, to require cancellations and terminations of any insurance coverage to continue to be made in a non-electronic written form, given the ramifications to policyholders that result from such actions. The proposed new rules also do not apply to filings with the Department. The use of electronic filings with the Department is addressed through existing procedures, such as the System for Electronic Rates and Forms Filings (SERFF).

Except as noted below concerning certain automobile insurance transactions, the Department is not mandating the procedures by which carriers shall comply with the rules or the Act. The Department believes that it is appropriate to provide carriers and producers with sufficient flexibility to develop procedures that they deem appropriate in order to facilitate electronic transactions, while complying with all applicable provisions of law. The Department stresses that the Act requires that the parties to the transaction agree to performing the transaction electronically or creating the record electronically, and that nothing in the Act or these rules requires that any transaction, which otherwise would be made in writing, be made electronically. The proposed new rules and amendments merely recognize the existing provisions of the Act, which permit such transactions and records to be created electronically. Ultimately, this will benefit consumers, as well as carriers and producers, by recognizing additional means of creating records or entering into transactions which are currently utilized in other areas of commerce, such as internet sales and telephone sales of various products and services.

Proposed N.J.A.C. 11:1-47.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-47.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:1-47.3 sets forth the requirements for the use of electronic transactions. As noted above, the rule generally refers to the Act in terms of requirements for electronic transactions. The rule reiterates the requirement in the Act that all parties shall agree to the use of electronic records for such a transaction to be given effect. In addition, carriers and producers are required to develop appropriate procedures for the use of electronic transactions in their dealings with applicants, insureds or any other party. Finally, the procedures developed by carriers shall be a part of their underwriting rules, to the extent the underwriting rules are subject to review and approval by the Commissioner of Banking and Insurance (Commissioner). If underwriting rules are not subject to prior review and approval, then the procedures shall be included in the carrier's or producer's business plan. This recognizes that carriers and producers should be in a position to develop written procedures for the use of electronic records that recognize the requirements for the use of such electronic records as set forth in the Act, and which also ensure that such procedures are consistent with other requirements of law.

Proposed N.J.A.C. 11:1-47.4 sets forth penalties for violations of the subchapter.

The Department is also proposing amendments to N.J.A.C. 11:3-15.4, 15.7 and 47.3, to specifically address the how the existing procedures concerning providing the Automobile Insurance Buyers Guide Coverage Selection Form and Automobile Insurance Consumer Bill of Rights to applicants and insureds and providing the insurance scenarios to applicants can be reconciled with permitting transactions in electronic format. The Department is also proposing to delete N.J.A.C. 11:3-15.7(e) as no longer necessary.

Specifically, the rules proposed to be amended currently require that a Buyer's Guide, Coverage Selection Form, Automobile Insurance Consumer Bill of Rights and insurance scenarios be provided with an application for private passenger automobile insurance. If, as is permitted under the Act, the application process is performed electronically such as via telephone, and coverage may be bound during the telephonic transaction, the requirement that these documents be provided with an application would not be feasible. Moreover, these requirements would only serve to slow down the application process, rather than expedite it, to the detriment of consumers and inconsistent with the goal of the Act. However, applicants for private passenger automobile insurance are required to be provided with this information to enable them to make informed choices about the insurance coverage they buy. In order to realize all of these goals, the proposed amendments require that insurers shall provide a copy of the relevant document within five business days after the electronic transaction is completed. Insureds may then alter coverages or limits based on a review of the information provided, with such change to be effective after receipt by the insurer as set forth in N.J.A.C. 11:3-15.7(d)2.

A 60-day comment period is provided for this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

These proposed new rules and amendments should have a positive social impact on New Jersey's insurance marketplace by making the insurance transaction more efficient and by minimizing the hurdles faced by consumers in obtaining insurance. The potential financial

affects of the increases in efficiency that will result from these new rules and amendments are discussed in the economic impact statement below.

As noted above, the proposed new rules and amendments further the intent of the Legislature as set forth in the Act and are consistent with the intent of Congress as set forth in 15 U.S.C. §§ 7001 et seq. that electronic signatures and records be permitted and recognized in entering into contracts provided certain safeguards are met. The proposed new rules and amendments merely reflect the existing statutory framework for the use of electronic records and transactions. The proposed new rules and amendments do not mandate that electronic transactions be utilized. Ultimately, these procedures should benefit consumers, as well as carriers, producers, and the insurance market generally, by providing additional means by which insurance transactions may be entered into or by which required notices or information may be provided, to expedite existing processes and avoid unnecessary time and expense in delivering notices in hard copy.

Economic Impact

Carriers and producers will be required to develop procedures for the use of electronic transactions consistent with the requirements in the Act if they choose to enter into such transactions electronically. No party is required to enter into any transaction through electronic means. The rules merely reflect the provisions of the Act, which recognize such electronic records and transactions. The Department believes that the procedures established by the Act and recognized in these proposed new rules and amendments ultimately will provide carriers and producers greater flexibility with respect to insurance transactions, reduce unnecessary mailing and duplication costs, increase productivity and streamline the application process for

consumers. These actions will, in turn, benefit consumers, carriers, producers and the insurance market generally. With regard to consumers, the anticipated increases in the efficiency and the productivity of producers and insurers should ultimately result in reduced administrative costs which, in turn, should put downward pressure on rates. The Department believes that any additional costs insurers may incur in the short term in developing and implementing revised procedures if they opt to process and/or record transactions electronically will be outweighed by the long-term benefits to be achieved.

Federal Standards Statement

The use of electronic records and signatures in insurance transactions are subject to Federal law, 15 U.S.C. §§ 7001 et seq, as well as State law, N.J.S.A. 12A:12-1 et seq. The Department believes that the proposed new rules and amendments are consistent with existing New Jersey law and do not impose any burdens greater than those imposed by the Federal law with respect to the electronic transactions to which the rules will apply.

Jobs Impact

Through recognition of the use of electronic transactions in insurance transactions, additional means of delivery of insurance products may be provided, thereby expanding access to such products. This, in turn, may contribute to a healthy business climate in New Jersey, which may have a positive impact on jobs.

The Department invites commenters to submit any data or studies concerning the jobs impact on the proposed new rules and amendments together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed new rules and amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules and amendments do not directly impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements are imposed by the Act. Small businesses affected by these requirements would be carriers authorized to transact business in this State, and resident producers licensed in this State. The proposed new rules and amendments do not provide any differentiation based on business size. As noted above, the proposed new rules and amendments generally reference the requirements in the Act for the use of electronic transactions. The use of such electronic means is not mandatory and, in any event, the Act does not provide any differentiation in compliance requirements specifically based on business size. Such differentiation would not be feasible since the Act establishes a uniform framework for the use of electronic transactions by all entities. In addition, the proposed amendments attempt to reconcile the use of electronic transactions in the provision of private passenger automobile insurance with the existing statutory and regulatory framework regarding the delivery of certain documents at the time of application for such insurance. The Department does not believe that these requirements impose an undue burden on carriers or producers and, as noted above, the use of electronic transactions is not mandatory. The Department does not

believe that additional professional services will be necessary to comply with the requirements of these proposed new rules and amendments or the Act.

For the foregoing reasons, the proposed new rules and amendments provide no differentiation in compliance requirements based on business size.

Smart Growth Impact

The proposed new rules and amendments will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [brackets]):

SUBCHAPTER 47. ELECTRONIC TRANSACTIONS

11:1-47.1 Purpose and scope

(a) This subchapter recognizes and permits electronic transactions between carriers or producers, and applicants, insureds, or other parties.

(b) This subchapter applies to all transactions between carriers and producers, and an applicant, insured or other party for all kinds of insurance pursuant to Titles 17 and 17B of the New Jersey Statutes. This subchapter shall also apply to transactions involving the PAIP and CAIP. This subchapter shall not apply to cancellation, nonrenewal or termination of any insurance coverage. This subchapter shall not apply to filings required to be made with the Department.

11:1-47.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“CAIP” means the Commercial Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-1.

“Carrier” means an insurance company, health service corporation, hospital service corporation, medical service corporation, dental service corporation, dental plan organization or health maintenance organization approved, authorized, admitted, or eligible to transact business in this State pursuant to Titles 17, 17B or 26 of the New Jersey Statutes, as applicable.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Electronic record” is as defined in N.J.S.A. 12A:12-2.

“Electronic signature” is as defined in N.J.S.A. 12A:12-2.

“PAIP” means the Personal Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1 and N.J.A.C. 11:3-2.

“Producer” means a person required to be licensed pursuant to N.J.S.A. 17:22A-26 et seq. to sell, solicit or negotiate insurance in this State.

“Record” is as defined in N.J.S.A. 12A:12-2.

11:1-47.3 Electronic transactions

(a) To the extent any statute or rule requires that a transaction or record related thereto between a carrier or a producer and an applicant, insured or other party be in writing, with or without a signature, such transaction or record may be made electronically, provided the requirements of N.J.S.A. 12A:12-1 et seq. with respect to the use of electronic transactions, are satisfied.

(b) All parties shall agree to the use of electronic records in order for such transactions to be given effect.

(c) Carriers and producers shall develop appropriate procedures for the use of electronic transactions in their dealings with applicants, insureds or any other party. The procedures shall provide for the use of electronic records and transactions consistent with all requirements of law.

(d) All procedures shall be part of a carrier's underwriting rules, to the extent underwriting rules are subject to review and approval by the Commissioner. If underwriting rules are not subject to review and approval, such procedures shall be included in the carrier's or producer's business plan.

11:1-47.4 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized pursuant to N.J.S.A. 17:33-2 and 17B:21-2.

SUBCHAPTER 15. BUYER'S GUIDE, COVERAGE SELECTION FORM, AND
AUTOMOBILE INSURANCE CONSUMER BILL OF RIGHTS FOR
STANDARD AND BASIC POLICIES

11:3-15.4 Compliance

(a) No new private passenger automobile insurance policy or renewal shall be issued on or after July 13, 2004 unless the application for the policy or renewal is accompanied by a Buyer's Guide, a Coverage Selection Form and an Automobile Insurance Consumer Bill of Rights that meet the minimum standards prescribed in this subchapter.

1. (No change).

2. Where application for or renewal of an insurance policy is made via the internet, compliance with (a) above shall be satisfied by having the Buyer's Guide, Coverage Selection Form and Automobile Insurance Consumer Bill of Rights readily available to the applicant/insured on the insurer's web site.

3. Where application for or renewal of an insurance policy is made via the telephone and coverage is bound during the telephonic transmission, compliance with (a) above shall be satisfied if the insurer, with the agreement of the applicant or insured, sends the insured the Buyer's Guide, a completed Coverage Selection Form showing the coverage choices made by the insured, and an Automobile Insurance Consumer Bill of Rights within five business days after the telephonic transaction is completed. Insureds may alter coverages based on their review of such documents by returning a signed Coverage Selection Form with the changes noted therein, or electronically, if such process is made available by the insurer. Such alterations shall be effective in accordance with N.J.A.C. 11:3-15.7(d)2.

(b)– (d) (No change.)

11:3-15.7 Use of coverage selection form; availability

(a) – (c) (No change.)

(d) All coverage changes that are required to be made by a signed Coverage Selection Form, either by this subchapter or by the insurer, shall become effective in the following manner, except when coverage for comprehensive or collision is effected by a required inspection pursuant to N.J.A.C. 11:3-36.

1. (No change.)

2. For mid-term policy changes, the choices on the Coverage Selection Form shall be effective the day following the date of postmark or, when personal delivery is made or if the postmark is illegible, the day following receipt of the signed Coverage Selection Form by the insurer or an insurance producer. **If the change is made electronically, the change shall be**

effective the day following date of receipt as determined in accordance with N.J.S.A. 12A:12-15;

3. (No change.)

[(e) With the knowledge and consent of an insured or applicant, an insurer may transmit the Buyer's Guide and Coverage Selection Form to the applicant or insured by facsimile or electronic transmission. For purposes of this subchapter, insurers may make the Buyer's Guide and Coverage Selection Forms available at a website or by e-mail. Where applicants and policyholders obtain copies of these documents by e-mail or website, it shall not be necessary for insurers to also mail a copy of the document to the insured or applicant. A signed Coverage Selection Form may be transmitted to the insurer by facsimile but not by electronic mail.]

11:3-47.3 Insurance scenarios

(a) Pursuant to N.J.S.A. 17:29A-52, insurers and insurance producers shall provide insurance scenarios in accordance with this subchapter.

1. – 3. (No change.)

4. Where application for an insurance policy is made via the internet, compliance with (a)1 above shall be satisfied by having the insurance scenarios readily available to the applicant on the insurer's web site.

5. Where application for an insurance policy is made via the telephone and coverage is bound during the telephonic transmission, compliance with (a)1 above shall be satisfied if the insurer, with the agreement of the applicant, sends the applicant the insurance scenarios within five business days after the telephonic transaction is completed. Insureds may alter coverages based on their review of the insurance scenarios by returning

a signed Coverage Selection Form with the changes noted therein, or electronically, if such process is made available by the insurer. Such alterations shall be effective in accordance with N.J.A.C. 11:3-15.7(d)2.

(b) – (g) (No change.)

JC04-06/inoregs