



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

**Circular Letter No. 33 (1999)  
November 4, 1999**

**TO: All licensed life insurers, fraternal benefit societies, charitable and segregated gift annuity societies, employee welfare funds, retirement systems, viatical settlement licensees, governmental variable supplements funds, savings bank life insurance departments, property/casualty insurers, co-operative property/casualty insurers, financial guaranty insurers, mortgage guaranty insurers, title insurers, reciprocal insurers, accident and health insurers, Article 43 corporations, municipal cooperative health benefit plans, and rate service organizations; State Insurance Fund; Medical Malpractice Insurance Association; New York Property Insurance Underwriting Association; Motor Vehicle Accident Indemnification Corporation; Excess Line Association of New York; registered risk retention groups, service contract providers, and Public Health Law Article 44 health maintenance organizations and integrated delivery systems; and accredited reinsurers**

**RE: The Use of Electronic Signatures and Records in Connection With the Marketing and Sale of Insurance By Means of Electronic Commerce**

Advances in electronic technology are causing businesses, including those in the insurance industry, to integrate various elements of electronic commerce into their operations. In response to the demands of industry and consumers, New York State has enacted the Electronic Signatures and Records Act ("the Act") as part of the State Technology Law (Chapter 4 of the Laws of 1999) which was signed into law on September 28, 1999. The substantive provisions of the Act will become effective on March 26, 2000.

The Act creates a statutory structure in New York State that supports the use of [electronic signatures](#) and electronic records in everyday public and business undertakings. With the enactment of the Act, certain insurance transactions may be conducted entirely through electronic means.

The internet, and electronic commerce, have empowered consumers in the insurance marketplace. Clear guidelines to facilitate paperless insurance transactions while preserving and enhancing consumer and solvency protections are necessary for an electronic insurance marketplace to succeed. The Insurance Department has conducted a detailed survey of those provisions of the Insurance Law that may be impacted by the Act and the use of electronic technology. This Circular Letter is intended to provide guidance to the industry, and to prompt discussions between the industry and the Department, in regard to the marketing and sale of insurance electronically. As required by the Act, the Office for Technology, as the Electronic Facilitator, will promulgate rules and regulations regarding entities' integration of electronic commerce into their operations.

The great majority of existing provisions of the Insurance Law do not pose any impediment to electronic commerce and do not inhibit the legislative intent to place electronic commerce on the same legal ground as paper commerce. An insurer should, however, refer to the applicable law, rules, and regulations when it seeks to integrate elements of electronic commerce into its business operations. It is the Department's interpretation that:

- Statutes that utilize the words "writing", "certificate", or "memorandum", or the like, permit electronic documents.
- Statutes that require that a document be "signed" permit electronic signatures.
- Statutes that provide for "delivery", "notice", or the like, permit electronic communications.

- Regulation 152 (11 NYCRR 243), governing records retention by insurers and certain other entities, is not affected by the Act and continues to be applicable.
- Formatting requirements prescribed by statute, including pagination, type size, print color or that certain language be conspicuous or be placed in a certain location within a document, may be met electronically if the sender and recipient of the electronic document utilize a computer technology that ensures the creation, transmission, and receipt of a document equivalent to that prescribed by statutory formatting requirements. (Factors that may be considered include uniform display of the document and technology that precludes the alteration of a document.) Insurers are encouraged to discuss with the Department how these statutory requirements may be satisfied.

However, there are certain statutes that contain additional requirements that, without amendment or further regulatory interpretation, may present obstacles to electronic commerce, e.g., the use of a "seal" or "notary" with a writing, United States mail, and statutory cancellation notice requirements.

Insurers should be aware that Section 109 of the Act provides that the use of electronic records and signatures is voluntary and that "...[n]othing in this article shall require any entity or person to use an electronic record or an electronic signature unless otherwise provided by law." Thus, if any one party to the transaction does not wish, or is not able, to participate fully in an electronic transaction, such party cannot be required to do so. Accordingly, it may be advisable to obtain the consumer's consent to carry out insurance transactions electronically. Whether or not obtaining consent is appropriate will depend upon the nature of the particular transaction.

The Insurance Department encourages insurers to carefully review the Act and other laws and to consider integrating the use of electronic signatures and records into their insurance business in New York State. Insurers should develop responsible strategies to address the issues inherent in the conduct of insurance business electronically. Insurers that wish to incorporate the use of electronic commerce should conduct their own legal and technical computer reviews. Insurers may also wish to review their current policy forms and procedures to determine whether they need to be revised to accommodate electronic commerce. The insurance industry should also be mindful that there are emerging issues involved in the conduct of business electronically which will only be clarified over time as the result of court decisions and administrative actions. These issues include, among other things, security, privacy, and jurisdictional matters, including those involving the location of business conducted electronically for purposes of licensing. We look forward to facilitating a dialogue between consumers, producers, underwriters and the Department which will result in greater market access for the consumer.

Any questions regarding interpretation of the Insurance Law in connection with the implementation of electronic commerce are to be directed to Kevin M. Rampe, Esq., Deputy Superintendent and General Counsel or Audrey Samers, Deputy General Counsel, at the address set forth above.

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Neil D. Levin  
Superintendent of Insurance

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The term "electronic signature" is defined in Section 102(3) of the Act as "...an electronic identifier, including without limitation a digital signature, which is unique to the person using it, capable of verification, under the sole control of the person using it, attached to or associated with data in such a manner that authenticates the attachment of the signature to particular data and the integrity of the data transmitted, and intended by the party using it to have the same force and effect as the use of a signature affixed by hand."