

LCB File No. R115-02

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption of Regulations
of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 9:00 a.m., on September 18, 2002, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

REGULATION CONCERNING ELECTRONIC TRANSACTIONS

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The proposed regulation allows for the use of electronic transactions regarding insurance.
2. Estimated economic effect of the regulation:
On the business which it is to regulate:
The proposed regulation should not have either an immediate or long-term impact on the insurers, other than the nominal expense of filing a report with the Commissioner in the event such reporting is required under the regulation.
On the public:
The proposed regulation should have no economic impact on the public.
3. The Division may incur some additional expense to enforce the proposed regulation that cannot be measured at this time.
4. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
5. The proposed regulation does not establish any new fees or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before September 13, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

White Pine County Library
950 Campton Street
Ely, NV 89301

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Washoe County Library
301 South Center Street
P.O. Box 2151
Reno, NV 89505

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

DATED this _____ day of August, 2002.

By:

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON PROPOSED REGULATIONS

August 15, 2002

The Department of Business and Industry, Division of Insurance (Division) is proposing new regulations pertaining to electronic transactions, filing of financial statements and risk based capital reporting for certain health entities. A workshop has been set for 9:00 a.m., on September 18, 2002, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

1. Electronic Transactions: Proposed regulation allows insurers to file forms through the System for Electronic Rate and Form Filing (SERFF) and pay such related filing fees by electronic funds transfer through the Nevada State Treasurer's office.
2. Filing of Financial Statements: Proposed regulation allows for insurers to satisfy the requirements of NRS 680A.270 by filing financial statements electronically with the National Association of Insurance Commissioners by submitting an affidavit that such filing has been made and by paying the applicable filing fee.
3. Risk Based Capital Reporting: Proposed temporary regulation provides for health entities to meet certain risk based capital filing requirements.

Members of the insurance industry, business community, and the public are also invited to comment on any impact the proposed regulations may have on small businesses. The Division has reviewed the proposed regulations and determined that the regulations do not impose a direct or significant impact on a small business, or directly restrict the formation, operation, or expansion of a small business.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at **www.leg.state.nv.us**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

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Division of Insurance
2501 East Sahara Avenue, Suite 302
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1401 East Flamingo Road
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DATED this _____ day of August, 2002.

By:
ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

**PROPOSED REGULATION OF THE DIVISION OF INSURANCE
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

**REGULATIONS FOR
ELECTRONIC TRANSACTIONS**

Explanation-Matter *bold/italics* is new, matter in ~~[brackets/strikethrough]~~ is material to be omitted.

Authority: NRS 679B.130, NRS 679B.136

Section 1. Chapter 679B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *“Agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.*

Sec. 3. *“Automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.*

Sec. 4. *“Computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.*

Sec. 5. *“Contract” means the total legal obligation resulting from the parties’ agreement as affected by this regulation and other applicable law.*

Sec. 6. *“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.*

Sec. 7. *“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.*

Sec. 8. *“Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.*

Sec. 9. *“Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*

Sec. 10. *“Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a State or of a county, municipality, or other political subdivision of a State.*

Sec. 11. *“Information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.*

Sec. 12. *“Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.*

Sec. 13. *“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.*

Sec. 14. *“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.*

Sec. 15. *“Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a*

procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

Sec. 16. *“State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a State.*

Sec. 17. *“Transaction” means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.*

Sec. 18. 1. *Except as otherwise provided in subsection 2, this regulation applies to electronic records and electronic signatures relating to a transaction.*

2. This regulation does not apply to a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils, or testamentary trusts;

and

(b) the Uniform Commercial Code other than Sections 4-1-107 and 4-19

1-206, Chapter 2, and Chapter 2A.

3. This regulation applies to an electronic record or electronic signature otherwise excluded from the application of this regulation under subsection 2 to the extent it is governed by a law other than those specified in subsection 2.

4. A transaction subject to this regulation is also subject to other applicable substantive law.

5. This regulation is an enactment 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 and therefore, pursuant to Section 102(a) of

the Electronic Signatures in Global and National Commerce Act, modifies, limits, or supercedes the provisions of Section 101 of the Electronic Signatures in Global and National Commerce Act to the extent therein authorized.

6. This regulation applies to NRS 680A.300.

Sec. 19. This regulation applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this regulation.

Sec. 20. 1. This regulation does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

2. This regulation applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

3. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

4. Except as otherwise provided in this regulation, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this regulation of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

5. Whether an electronic record or electronic signature has legal consequences is determined by this regulation and other applicable law.

Sec. 21. 1. This regulation must be construed and applied:

(a) To facilitate electronic transactions consistent with other applicable law;

(b) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(c) To effectuate its general purpose to make uniform the law with respect to the subject of this regulation among States enacting it.

Sec. 22. 1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

3. If a law requires a record to be in writing, an electronic record satisfies the law.

4. If a law requires a signature, an electronic signature satisfies the law with the exception of a signature as required by NRS 680A.300.

Sec. 23. 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, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

2. If a law other than this regulation requires a record:

(a) To be posted or displayed in a certain manner;

(b) To be sent, communicated, or transmitted by a specified method; or

(c) 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 (b) of subsection 4, the record must be sent, communicated, or transmitted by the method specified in the other law;

(3) The record must contain the information formatted in the manner specified in the other law.

3. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

4. The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than this Act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than this Act to send, communicate, or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

Sec. 24. 1. *An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.*

2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Sec. 25. 1. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(a) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(1) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(2) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(3) has not used or received any benefit or value from the consideration, if any, received from the other person.

(c) If neither paragraph (a) nor paragraph (b) of subsection 1 applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(d) Paragraphs (b) and (c) of subsection 1 may not be varied by agreement.

Sec. 26. *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.*

Sec. 27. 1. *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:*

(a) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) remains accessible for later reference.

2. *A requirement to retain a record in accordance with subsection 1 does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.*

3. *A person may satisfy subsection 1 by using the services of another person if the requirements of that subsection are satisfied.*

4. *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 1.*

5. 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 1.

6. A record retained as an electronic record in accordance with subsection 1 satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this regulation specifically prohibits the use of an electronic record for the specified purpose.

Sec. 28. *In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.*

Sec. 29. 1. *In an automated transaction, the following rules apply:*

(a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(b) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and

(c) The terms of the contract are determined by the substantive law applicable to it.

Sec. 30. *Form filings required by NRS 686B.030 and NRS 687B.120 may be done so through the System for Electronic Rate and Form Filing (SERFF).*

Sec. 31. *Payment of fees associated with the filing of forms may be done so by electronic funds transfer through the Nevada State Treasurer's office.*

Sec. 32. 1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) is addressed properly or 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;

(b) is in a form capable of being processed by that system; and

(c) 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.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) it 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; and

(b) it is in a form capable of being processed by that system.

3. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4.

4. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction;

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

5. An electronic record is received under subsection 2 even if no individual is aware of its receipt.

6. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

7. If a person is aware that an electronic record purportedly sent under subsection 1, or purportedly received under subsection 2, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Sec. 33. 1. *In this section, "transferable record" means an electronic record that:*

(a) would be a note under Chapter 3 of the Uniform Commercial Code or a document under Chapter 7 of the Uniform Commercial Code if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

2. 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.

3. *A system satisfies subsection 2, 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:*

(a) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subparagraphs (3), (4), and (5), unalterable;

(1) the authoritative copy identifies the person asserting control as:

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

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

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

(3) 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;

(4) 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

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

4. *Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 4-1-201(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 4-3-302(a), 4-7-501, or 4-9-308 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable*

document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

5. 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.

6. 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.

Sec. 34. *If any provision of this regulation or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are severable.*