

# Legislative Analysis



## ALLOW ELECTRONIC DELIVERY FOR INSURANCE DOCUMENTS

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House Bill 5430 (reported from committee as substitute H-2)

Sponsor: Rep. Lana Theis

Committee: Insurance

Complete to 3-7-18

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 205 of 2018)*

### BRIEF SUMMARY:

House Bill 5430 would add Section 2266 to Chapter 22 of the Insurance Code (The Insurance Contract), to allow and create requirements for electronic delivery of insurance notices and documents.

### FISCAL IMPACT:

House Bill 5430 would not have a fiscal impact on any units of state or local government.

### DETAILED SUMMARY:

Under the bill, a notice to a party or any other document that is required in an insurance transaction or that is to serve as evidence of insurance coverage could be delivered, stored, and presented by electronic means if it met the requirements of the Uniform Electronic Transactions Act and, for a health insurer, if it met the requirements of Section 2236(9)(a)(ii) of the Code. [That section requires a health insurer to take appropriate and reasonable measures to protect the confidentiality of personal information when delivering an insurance form or notice required under the Code.]

The *electronic delivery* would be equivalent to any delivery method otherwise required by law, including first-class mail, first-class postage prepaid, certified mail, or certificate of mailing.

*Electronic delivery* would mean delivery by either of the following methods:

- Delivery to an email address at which a party has consented to receive notices or documents.
- Posting on an electronic network or site accessible by the internet and sending separate notice of the posting to the email address at which the party has consented to receive notice of the posting or using any other delivery method to which the party has consented.

*Party* would mean a recipient of a notice or document required as part of an insurance transaction, including an applicant, insured, policy holder, or annuity contract holder.

An insurer could use electronic delivery only if all of the following applied:

- The party had affirmatively consented to the electronic delivery and had not withdrawn consent.
- Before obtaining consent, the insurer provided the party with a clear and conspicuous statement informing the party of all of the following:
  - The right of the party to have the notice or document provided or made available in paper form or other nonelectronic form.
  - The right of the party to withdraw consent and any conditions or consequences imposed if consent is withdrawn.
  - The specific notice or document, or categories of notices or documents, that can be delivered by electronic means.
  - The means, after consent is given, by which the party may obtain a paper copy of a notice or document.
  - The procedures for the party to follow to update information needed to contact the party electronically and to withdraw consent.
- Before obtaining consent, the insurer provided the party with a statement of the hardware and software requirements for access and retention of a notice or document delivered by electronic means. The party must provide electronic consent to the hardware and software requirements or confirm consent electronically in a manner that demonstrates that the party can access information in the electronic form that will be used for delivery.

After the party consented, if a change occurred in hardware or software needed to access or retain a notice or document delivered by electronic means that creates a risk that the party would not be able to access or retain a notice or document, the insurer would have to provide the party with a statement that includes all the following:

- Information regarding the revised hardware or software requirements for access and retention of a notice or document delivered by electronic means.
- A description of the right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed in the consent.

A failure to comply with this requirement could be treated, at the election of the party, as a withdrawal of consent.

If a party withdrew consent of electronic delivery, the withdrawal would not affect the legal effectiveness, validity, or enforceability of a notice or document that was delivered prior to the withdrawal. Withdrawal of consent would become effective 15 days after the insurer received notice of the withdrawal. The withdrawal would be effective immediately if the insurer learned that the electronic delivery method used was no longer an effective delivery mechanism.

If an insurer believed that a party was not receiving the notices or documents being delivered by electronic means, including if the insurer received a notice that the electronic delivery failed, the insurer would have to deliver the notices or documents by first-class mail or any other deliver method required.

The bill would state that the proposed section must not be construed to modify, limit, or supersede the federal Electronic Signatures in Global National Commerce Act. Finally, an insurance producer would not be subject to civil liability for any harm or injury to a party that occurred as a result of either of the following:

- The party's consent to receive notices or documents delivered by electronic means under the bill.
- An insurer's failure to deliver a notice or document by electronic means, unless the insurance producer causes the harm or risk.

Proposed MCL 500.2266

#### **BRIEF DISCUSSION:**

According to testimony before the House Committee on Insurance, the bill is intended to place a high level of consumer protection in statute for individuals who may choose to receive insurance information electronically. Reportedly, the bill is based on model language put forth by a national insurers association, and 37 states have already adopted standards to allow electronic delivery of insurance documents. The bill does not change any existing notification requirement and does not change any insurance regulations, it simply proposes a voluntary document delivery option that an individual can select. Receiving documents and notices electronically is common in many business transactions, and could provide ease of access and cost savings for both insurance consumers and producers.

#### **POSITIONS:**

A representative of the Property Casualty Insurers Association of America testified in support of the bill. (2-15-18)

Representatives of the following entities indicated support of the bill:

- AAA Michigan (3-1-18)
- Michigan Association of Insurance Agents (2-15-18)
- Insurance Alliance of Michigan (2-15-18)
- Chubb Insurance (2-15-18)
- Michigan Association of Health Plans (2-15-18)

A representative of the Michigan Department of Insurance and Financial Services indicated a neutral position on the bill. (2-15-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.