

ALLOW ELECTRONIC DELIVERY FOR INSURANCE DOCUMENTS

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House Bill 5430 as introduced
Sponsor: Rep. Lana Theis
Committee: Insurance
Complete to 1-31-18

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

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. The bill would also amend three chapters of the Code to reference the proposed section with regard to existing document delivery requirements.

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. 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 only 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- The party had affirmatively consented to the electronic delivery and had not withdrawn consent.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 giving consent, the insurer provided the party with a clear and conspicuous statement informing the party of:
 - 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 - The right of the party to withdraw consent and any conditions or consequences imposed if consent is withdrawn;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; and
- The procedures for the party to follow to update information needed to contact the party electronically and to withdraw consent.
- Before giving 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.

Finally, 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.

Application of Proposed Requirements to Existing Chapters

The bill would reference this proposed section in three chapters of the Code regarding notices and document delivery. Generally speaking, the existing provisions regarding delivery would be amended to state “Subject to section 2666...” or “Except as otherwise provided in section 2266...” Below is a short description of these three chapters.

Chapter 5 (Privacy of Financial Information): Regarding licensees that must provide any notice required under the chapter so that consumers can reasonably be expected to receive actual notice in writing or, if agreed to, electronically.

Chapter 15 (Insurance Premium Finance Companies): Regarding the cancellation of insurance contracts listed in a premium finance agreement, and the notice of cancellation that must be given in order to cancel the insurance contract.

Chapter 16 (Creditor-Placed Insurance): Regarding a creditor-placed insurance policy and the delivery of a copy of the policy to the debtor, and the efforts to notify the debtor of the requirement to maintain insurance before imposing charges.

Proposed MCL 500.2266 and MCL 500.527 et al.

FISCAL IMPACT:

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

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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.