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## BILL ANALYSIS



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House Bill 5430 (Substitute H-2 as passed by the House)  
Sponsor: Representative Lana Theis  
House Committee: Insurance  
Senate Committee: Insurance

Date Completed: 5-23-18

**CONTENT**

**The bill would amend the Insurance Code to do the following:**

- **Allow a notice to a party, insurance coverage evidence, or other document that was required in an insurance transaction, to be delivered, stored, and presented by electronic means if the insurer met certain requirements.**
- **Require an insurer to obtain a party's consent to receive documents electronically, and give the party the ability to withdraw its consent.**
- **Specify that withdrawal of consent would become effective 30 days after the insurer received notice of the withdrawal, although consent would be withdrawn automatically if the electronic delivery method used were no longer effective.**
- **Specify that electronic delivery of a notice or document would be equivalent to any other delivery method required by law.**
- **Allow electronic delivery by: 1) delivery to an electronic mail address, or 2) posting on the internet plus notice of that posting sent to an electronic mail address.**

Specifically, a notice to a party or any other document that was required in an insurance transaction or that was to serve as evidence of insurance coverage could be delivered, stored, and presented by electronic means if it met both of the following:

- The requirements of the Uniform Electronic Transactions Act.
- For a health insurer, the requirements of Section 2236(9)(a)(ii) of the Code.

(That section allows a health insurer to satisfy a requirement for the delivery of an insurance form or required notice to a subscriber, insured, enrollee, or contract holder by taking measures that protect the confidentiality of a subscriber's, insured's, enrollee's, or contract holder's personal information, and meet other requirements.)

Electronic delivery of a notice or document as provided in the bill would be equivalent to any delivery method otherwise required by law, including delivery by first-class mail, first-class mail postage prepaid, certified mail, or certificate of mailing.

If an insurer had reason to believe that a party was not receiving notices or documents that the insurer attempted to deliver by electronic means, including if the insurer attempted delivery by electronic means and received a notice that the delivery had failed, the insurer would have to deliver the notices or documents by first-class mail or by any other delivery method required for them.

An insurer could use electronic delivery of a notice or a document to a party if the insurer met the requirements below and if the party had affirmatively consented to the electronic delivery method and had not withdrawn consent, and, before obtaining consent, the insurer provided the party with a clear and conspicuous statement informing the party of the following:

- The right of the party at any time to have the notice or the document provided or made available in paper form or by another nonelectronic form.
- The right of the party at any time to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed if consent were withdrawn.
- The specific notice or document or categories of notices or documents that could be delivered by electronic means during the course of the relationship between the insurer and the party.
- The means, after consent was given, by which the party could obtain a paper copy of a notice or document delivered by electronic means.
- The procedures for the party to follow to update information needed to contact the party electronically and to withdraw consent to have a notice or a document delivered by electronic means.

Before obtaining consent, the insurer also would have to give the party a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means. The party would have to provide electronic consent to the hardware and software requirements or confirm consent electronically in a manner that reasonably demonstrated that the party could access information in the electronic form that would be used for notices or documents delivered by electronic means.

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 created a material risk that the party would not be able to access or retain a notice or document to which consent applied, the insurer would have to give the party a statement that included all of the following:

- Information regarding the revised hardware or software requirements for access to 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 statement described above.

An insurer's failure to comply with the requirements concerning a change in hardware or software could be treated, at the election of the party, as a withdrawal of consent.

Withdrawal of consent to electronic delivery would not affect the legal effectiveness, validity, or enforceability of a notice or a document that was delivered by electronic means to a party before the withdrawal of consent was effective.

Withdrawal of consent by a party would become effective 30 days after the insurer received notice of the withdrawal. Consent would be automatically withdrawn, however, if the insurer learned that the electronic delivery method currently used was no longer an effective delivery mechanism.

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 a notice or a document delivered by electronic means.
- An insurer's failure to deliver a notice or document by electronic means unless the insurance producer caused the harm or injury.

The bill could not be construed to modify, limit, or supersede the Federal Electronic Signatures in Global National Commerce Act.

The bill would define "delivered by electronic means", "delivery by electronic means", or "electronic delivery" as delivery to an electronic mail address at which a party has consented to receive notices or documents, or delivery by both of the following:

- Posting on an electronic network or site accessible by the internet through use of a mobile application, computer, mobile device, tablet, or any other electronic device.
- Sending separate notice of that posting to the electronic mail address at which the party 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 and would include an applicant, insured, policy holder, or annuity contract holder.

Proposed MCL 500.2266

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.