

SUBSTITUTE FOR
HOUSE BILL NO. 5430

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding section 2266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2266. (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, A
2 NOTICE TO A PARTY OR ANY OTHER DOCUMENT THAT IS REQUIRED IN AN
3 INSURANCE TRANSACTION OR THAT IS TO SERVE AS EVIDENCE OF INSURANCE
4 COVERAGE MAY BE DELIVERED, STORED, AND PRESENTED BY ELECTRONIC
5 MEANS IF IT MEETS BOTH OF THE FOLLOWING:

6 (A) THE REQUIREMENTS OF THE UNIFORM ELECTRONIC TRANSACTIONS
7 ACT, 2000 PA 305, MCL 450.831 TO 450.849.

8 (B) FOR A HEALTH INSURER, THE REQUIREMENTS OF SECTION
9 2236(9) (A) (ii) .

10 (2) ELECTRONIC DELIVERY OF A NOTICE OR DOCUMENT AS PROVIDED IN

1 THIS SECTION IS EQUIVALENT TO ANY DELIVERY METHOD OTHERWISE
2 REQUIRED BY LAW, INCLUDING DELIVERY BY FIRST-CLASS MAIL, FIRST-
3 CLASS MAIL POSTAGE PREPAID, CERTIFIED MAIL, OR CERTIFICATE OF
4 MAILING.

5 (3) IF AN INSURER HAS REASON TO BELIEVE THAT A PARTY IS NOT
6 RECEIVING NOTICES OR DOCUMENTS THAT THE INSURER ATTEMPTS TO DELIVER
7 BY ELECTRONIC MEANS, INCLUDING IF THE INSURER ATTEMPTS DELIVERY BY
8 ELECTRONIC MEANS AND RECEIVES A NOTICE THAT THE DELIVERY BY
9 ELECTRONIC MEANS HAS FAILED, THE INSURER SHALL DELIVER THE NOTICES
10 OR DOCUMENTS BY FIRST-CLASS MAIL OR BY ANY OTHER DELIVERY METHOD
11 REQUIRED FOR THE NOTICES OR DOCUMENTS.

12 (4) AN INSURER MAY USE ELECTRONIC DELIVERY OF A NOTICE OR A
13 DOCUMENT TO A PARTY UNDER THIS SECTION IF THE INSURER MEETS THE
14 REQUIREMENTS OF SUBSECTION (5) AND IF ALL OF THE FOLLOWING
15 REQUIREMENTS ARE MET:

16 (A) THE PARTY HAS AFFIRMATIVELY CONSENTED TO THE ELECTRONIC
17 DELIVERY METHOD AND HAS NOT WITHDRAWN CONSENT.

18 (B) BEFORE OBTAINING CONSENT, THE INSURER PROVIDES THE PARTY
19 WITH A CLEAR AND CONSPICUOUS STATEMENT INFORMING THE PARTY OF ALL
20 OF THE FOLLOWING:

21 (i) THE RIGHT OF THE PARTY AT ANY TIME TO HAVE THE NOTICE OR
22 THE DOCUMENT PROVIDED OR MADE AVAILABLE IN PAPER FORM OR BY ANOTHER
23 NONELECTRONIC FORM.

24 (ii) THE RIGHT OF THE PARTY AT ANY TIME TO WITHDRAW CONSENT TO
25 HAVE A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS AND ANY
26 CONDITIONS OR CONSEQUENCES IMPOSED IF CONSENT IS WITHDRAWN.

27 (iii) THE SPECIFIC NOTICE OR DOCUMENT OR CATEGORIES OF NOTICES

1 OR DOCUMENTS THAT MAY BE DELIVERED BY ELECTRONIC MEANS DURING THE
2 COURSE OF THE RELATIONSHIP BETWEEN THE INSURER AND THE PARTY.

3 (iv) THE MEANS, AFTER CONSENT IS GIVEN, BY WHICH THE PARTY MAY
4 OBTAIN A PAPER COPY OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC
5 MEANS.

6 (v) THE PROCEDURES FOR THE PARTY TO FOLLOW TO UPDATE
7 INFORMATION NEEDED TO CONTACT THE PARTY ELECTRONICALLY AND TO
8 WITHDRAW CONSENT TO HAVE A NOTICE OR A DOCUMENT DELIVERED BY
9 ELECTRONIC MEANS.

10 (C) BEFORE OBTAINING CONSENT, THE INSURER PROVIDES THE PARTY
11 WITH A STATEMENT OF THE HARDWARE AND SOFTWARE REQUIREMENTS FOR
12 ACCESS TO AND RETENTION OF A NOTICE OR DOCUMENT DELIVERED BY
13 ELECTRONIC MEANS. THE PARTY SHALL PROVIDE ELECTRONIC CONSENT TO THE
14 HARDWARE AND SOFTWARE REQUIREMENTS OR CONFIRM CONSENT
15 ELECTRONICALLY IN A MANNER THAT REASONABLY DEMONSTRATES THAT THE
16 PARTY CAN ACCESS INFORMATION IN THE ELECTRONIC FORM THAT WILL BE
17 USED FOR NOTICES OR DOCUMENTS DELIVERED BY ELECTRONIC MEANS.

18 (5) AFTER THE PARTY CONSENTS AS PROVIDED IN SUBSECTION (4), IF
19 A CHANGE OCCURS IN HARDWARE OR SOFTWARE NEEDED TO ACCESS OR RETAIN
20 A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC MEANS THAT CREATES A
21 MATERIAL RISK THAT THE PARTY WILL NOT BE ABLE TO ACCESS OR RETAIN A
22 NOTICE OR DOCUMENT TO WHICH CONSENT APPLIES, THE INSURER SHALL
23 PROVIDE THE PARTY WITH A STATEMENT THAT INCLUDES ALL OF THE
24 FOLLOWING:

25 (A) INFORMATION REGARDING THE REVISED HARDWARE OR SOFTWARE
26 REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR DOCUMENT
27 DELIVERED BY ELECTRONIC MEANS.

1 (B) A DESCRIPTION OF THE RIGHT OF THE PARTY TO WITHDRAW
2 CONSENT WITHOUT THE IMPOSITION OF ANY CONDITION OR CONSEQUENCE THAT
3 WAS NOT DISCLOSED UNDER SUBSECTION (4) (B) (ii) .

4 (6) WITHDRAWAL OF CONSENT TO ELECTRONIC DELIVERY DOES NOT
5 AFFECT THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF A
6 NOTICE OR A DOCUMENT THAT IS DELIVERED BY ELECTRONIC MEANS TO A
7 PARTY BEFORE THE WITHDRAWAL OF CONSENT IS EFFECTIVE.

8 (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
9 WITHDRAWAL OF CONSENT BY A PARTY BECOMES EFFECTIVE 30 DAYS AFTER
10 THE INSURER RECEIVES NOTICE OF THE WITHDRAWAL. CONSENT IS
11 AUTOMATICALLY WITHDRAWN IF THE INSURER LEARNS THAT THE ELECTRONIC
12 DELIVERY METHOD CURRENTLY USED IS NO LONGER AN EFFECTIVE DELIVERY
13 MECHANISM.

14 (8) FAILURE BY AN INSURER TO COMPLY WITH SUBSECTION (5) MAY BE
15 TREATED, AT THE ELECTION OF THE PARTY, AS A WITHDRAWAL OF CONSENT.

16 (9) THIS SECTION MUST NOT BE CONSTRUED TO MODIFY, LIMIT, OR
17 SUPERSEDE THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL NATIONAL
18 COMMERCE ACT, 15 USC 7001 TO 7031.

19 (10) AN INSURANCE PRODUCER IS NOT SUBJECT TO CIVIL LIABILITY
20 FOR ANY HARM OR INJURY TO A PARTY THAT OCCURS AS A RESULT OF EITHER
21 OF THE FOLLOWING:

22 (A) THE PARTY'S CONSENT UNDER SUBSECTION (4) TO RECEIVE A
23 NOTICE OR A DOCUMENT DELIVERED BY ELECTRONIC MEANS UNDER THIS
24 SECTION.

25 (B) AN INSURER'S FAILURE TO DELIVER A NOTICE OR DOCUMENT BY
26 ELECTRONIC MEANS UNLESS THE INSURANCE PRODUCER CAUSES THE HARM OR
27 INJURY.

1 (11) AS USED IN THIS SECTION:

2 (A) "DELIVERED BY ELECTRONIC MEANS", "DELIVERY BY ELECTRONIC
3 MEANS", OR "ELECTRONIC DELIVERY" MEAN DELIVERY BY EITHER OF THE
4 FOLLOWING METHODS:

5 (i) DELIVERY TO AN ELECTRONIC MAIL ADDRESS AT WHICH A PARTY
6 HAS CONSENTED TO RECEIVE NOTICES OR DOCUMENTS.

7 (ii) BOTH OF THE FOLLOWING:

8 (A) POSTING ON AN ELECTRONIC NETWORK OR SITE ACCESSIBLE BY THE
9 INTERNET THROUGH USE OF A MOBILE APPLICATION, COMPUTER, MOBILE
10 DEVICE, TABLET, OR ANY OTHER ELECTRONIC DEVICE.

11 (B) SENDING SEPARATE NOTICE OF THE POSTING DESCRIBED IN SUB-
12 SUBPARAGRAPH (A) TO THE ELECTRONIC MAIL ADDRESS AT WHICH THE PARTY
13 CONSENTED TO RECEIVE NOTICE OF THE POSTING OR USING ANY OTHER
14 DELIVERY METHOD TO WHICH THE PARTY HAS CONSENTED.

15 (B) "PARTY" MEANS A RECIPIENT OF A NOTICE OR DOCUMENT REQUIRED
16 AS PART OF AN INSURANCE TRANSACTION AND INCLUDES AN APPLICANT,
17 INSURED, POLICY HOLDER, OR ANNUITY CONTRACT HOLDER.