

HOUSE BILL No. 5430

January 18, 2018, Introduced by Reps. Theis, Leutheuser, Bizon, Webber, Love, Kelly, Alexander, Vaupel, Calley and Kahle and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 527, 1511, 1613, 1625, and 2248 (MCL 500.527, 500.1511, 500.1613, 500.1625, and 500.2248), section 527 as added by 2001 PA 24, sections 1613 and 1625 as added by 2002 PA 655, and section 2248 as amended by 2012 PA 454, and by adding section 2266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 527. (1) A licensee shall provide any notice required
2 under this chapter so that each consumer can reasonably be expected
3 to receive actual notice in writing or, if the consumer agrees,
4 electronically. A licensee may reasonably expect that a consumer
5 will receive actual notice if the licensee does any of the
6 following:

7 (a) Hand delivers a printed copy of the notice to the
8 consumer.

1 (b) Mails a printed copy of the notice to the last known
2 address of the consumer separately, or in a policy, billing, or
3 other written communication.

4 (c) ~~For~~**SUBJECT TO SECTION 2266, FOR** a consumer who conducts
5 transactions electronically, posts the notice on the electronic
6 site and requires the consumer to acknowledge receipt of the notice
7 as a necessary step to obtaining a particular insurance product or
8 service.

9 (d) For an isolated transaction with a consumer, such as the
10 licensee providing an insurance quote or selling the consumer
11 travel insurance, posts the notice and requires the consumer to
12 acknowledge receipt of the notice as a necessary step to obtaining
13 the particular insurance product or service.

14 (2) The following do not provide a reasonable expectation that
15 a consumer will receive actual notice of a licensee's privacy
16 policies and practices under subsection (1):

17 (a) The licensee only posts a sign in its office or generally
18 publishes advertisements of its privacy policies and practices.

19 (b) The licensee sends the notice via electronic mail to a
20 consumer who does not obtain an insurance product or service from
21 the licensee electronically.

22 (3) ~~A~~**SUBJECT TO SECTION 2266, A** licensee may reasonably
23 expect that a customer will receive actual notice of the licensee's
24 annual notice in either of the following ~~eases~~**:CIRCUMSTANCES:**

25 (a) The customer uses the licensee's website to access
26 insurance products and services electronically and agrees to
27 receive notices at the website and the licensee posts its current

1 privacy notice continuously in a clear and conspicuous manner on
2 the website.

3 (b) The customer has requested that the licensee refrain from
4 sending any information regarding the customer relationship, and
5 the licensee's current privacy notice remains available to the
6 customer ~~upon~~**ON** request.

7 (4) A licensee shall not provide any notice required by this
8 chapter solely by orally explaining the notice, either in person or
9 over the telephone.

10 (5) For customers only, a licensee shall provide the initial,
11 annual, and revised notices so that the customer can retain them or
12 obtain them later in writing or, **SUBJECT TO SECTION 2266**, if the
13 customer agrees, electronically. A licensee provides an initial,
14 annual, or revised notice to the customer so that the customer can
15 retain it or obtain it later if the licensee does any of the
16 following:

17 (a) Hand delivers a printed copy of the notice to the
18 customer.

19 (b) Mails a printed copy of the notice to the last known
20 address of the customer.

21 (c) ~~Makes~~**SUBJECT TO SECTION 2266, MAKES** the current initial,
22 annual, or revised notice available on a website or a link to
23 another website for the customer who obtains an insurance product
24 or service electronically and agrees to receive the notice at the
25 website.

26 (6) A licensee may provide a joint notice from the licensee
27 and 1 or more of its affiliates or other financial institutions, as

1 identified in the notice, if the notice is accurate with respect to
 2 the licensee and the other institutions. A licensee may also
 3 provide a notice on behalf of another financial institution, as
 4 identified in the notice, if the notice is accurate with respect to
 5 the licensee and the other institution.

6 (7) If 2 or more consumers jointly obtain an insurance product
 7 or service from a licensee, the licensee may satisfy the initial,
 8 annual, and revised notice requirements by providing 1 notice to
 9 those consumers jointly.

10 Sec. 1511. (1) ~~When~~ **IF** a premium finance agreement empowers
 11 the premium finance company to cancel ~~any~~ **AN** insurance contract ~~or~~
 12 ~~contracts~~ listed in the agreement, the **PREMIUM FINANCE COMPANY**
 13 **SHALL NOT CANCEL THE** insurance contract ~~or contracts shall not be~~
 14 ~~canceled by the premium finance company unless such~~ **THE**
 15 cancellation is effectuated in accordance with this section.

16 (2) Not less than 10 days' written notice ~~shall~~ **MUST** be mailed
 17 to the insured of the intent of the premium finance company to
 18 cancel the insurance contract unless the default is cured within
 19 the 10-day period.

20 (3) After expiration of the 10-day period **UNDER SUBSECTION**
 21 **(2)**, the premium finance company may request cancellation of the
 22 insurance contract by mailing to the insurer a notice of
 23 cancellation, and the **INSURER SHALL CANCEL THE** insurance contract
 24 ~~shall be cancelled by the insurer without requiring the return of~~
 25 the insurance contract. ~~The~~ **SUBJECT TO SECTION 2266, THE** premium
 26 finance company shall also mail a notice of cancellation to the
 27 insured at his **OR HER** last known address at the same time the

1 premium finance company requests cancellation of the insurance
2 contract.

3 (4) All statutory, regulatory and contractual restrictions
4 providing that the insurance contract may not be canceled unless
5 notice is given to a governmental agency, mortgagee, or other third
6 party shall apply where ~~IF THE~~ cancellation is effected under ~~the~~
7 ~~provisions of~~ this section. The insurer shall give the prescribed
8 notice ~~in~~ **ON** behalf of itself or the insured to any governmental
9 agency, mortgagee, or other third party on or before the second
10 business day after the day it receives the notice of cancellation
11 from the premium finance company and shall determine the effective
12 date of cancellation taking into consideration the number of days'
13 notice required to complete the cancellation.

14 (5) ~~Whenever~~ **IF** a financed contract is canceled, the insurer
15 shall return ~~whatever~~ **THE** gross unearned premiums ~~are~~ due under the
16 insurance contract to the premium finance company for the account
17 of the insured.

18 (6) If the crediting of return premiums to the account of the
19 insured results in a surplus over the amount due from the insured,
20 the premium finance company shall refund the excess to the insured.
21 ~~, but~~ **HOWEVER**, no refund shall be ~~IS~~ required if ~~it amounts to~~ **THE**
22 **EXCESS IS** less than \$1.00.

23 Sec. 1613. Creditor-placed insurance ~~shall~~ **MUST** be set forth
24 in an individual policy or certificate of insurance. ~~A~~ **EXCEPT AS**
25 **OTHERWISE PROVIDED IN SECTION 2266, A** copy of the individual
26 policy, certificate of insurance coverage, or other evidence of
27 insurance coverage ~~shall~~ **MUST** be mailed, first-class mail, or

1 delivered in person to the last known address of the debtor.

2 Sec. 1625. (1) A creditor shall not impose charges, including
3 premium costs and related interest and finance charges, on a debtor
4 for creditor-placed insurance coverage unless adequate disclosure
5 of the requirement to maintain insurance has been made to the
6 debtor. Adequate disclosure is accomplished if all of the following
7 occur:

8 (a) The credit agreement sets forth the requirement that the
9 debtor must maintain insurance on the collateral as provided ~~for~~ in
10 section 1621.

11 (b) The creditor makes reasonable efforts to notify the debtor
12 of the requirement to maintain insurance and allows a reasonable
13 time for compliance with this requirement.

14 (c) A final notice as required by this chapter is sent to the
15 debtor.

16 (d) If creditor-placed insurance coverage is issued, a copy of
17 the policy or certificate is sent to the debtor as provided ~~for~~ in
18 section 1613.

19 (2) After adequate disclosure of the request to maintain
20 insurance has been made to the debtor as required ~~by~~ **UNDER** this
21 section, a creditor may proceed to impose charges for creditor-
22 placed insurance if the debtor fails to provide evidence of
23 insurance. A creditor may impose charges no earlier than 10 days
24 after sending the final notice.

25 (3) Reasonable efforts to notify the debtor under subsection
26 (1)(b) are accomplished if the creditor does all of the following:

27 (a) ~~Mails~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 2266, MAILS**

1 a notice by first-class mail to the debtor's last known address as
2 contained in the creditor's records, stating that the creditor
3 intends to charge the debtor for creditor-placed insurance coverage
4 on the collateral if the debtor fails to provide evidence of the
5 property insurance to the creditor.

6 (b) Allows the debtor at least 20 days to respond to the
7 notice and provide evidence of acceptable insurance coverage before
8 sending a final notice.

9 (c) ~~Sends~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 2266, SENDS**
10 a final notice in compliance with this section by first-class mail
11 to the debtor's last known address as contained in the creditor's
12 records at least 10 days before the cost of insurance is charged to
13 the debtor by the creditor. Proof of the mailing of the final
14 notice ~~shall~~ **MUST** be retained for at least 3 years following the
15 expiration or termination of the coverage or as otherwise required
16 by law.

17 (4) The initial notice under this section ~~shall~~ **MUST** be in a
18 form determined by the creditor to remind the debtor of the
19 requirement to maintain insurance on the collateral. The final
20 notice under this section ~~shall~~ **MUST** be as complete as the
21 following notice, printed in not less than 12-point type, and
22 modified where necessary to fit the nature of the credit
23 transaction:

24 **FINAL NOTICE**

25 Your credit agreement with us requires you to have property
26 insurance on the collateral until you pay off your loan. You have
27 not given us proof you have insurance on the property. You can ask

1 your insurance company or agent to give us proof of insurance or
2 you can send us proof you have property insurance within 10
3 calendar days after the date this letter was postmarked. If you do
4 not, we will buy the insurance and charge the cost to you.

5 You must pay for the property insurance we buy. It may cost
6 more than insurance you can buy on your own. The cost of the
7 insurance we buy may be added to your loan balance and we may
8 charge you interest on it. If we do, you will pay interest at the
9 same rate you pay on your loan.

10 The insurance we buy will pay claims to us (the creditor) for
11 physical damage to your property. It will not pay any claims made
12 against you [and it may not pay you for any claims you make (delete
13 if limited dual interest coverage)]. The insurance we buy will not
14 give you any liability insurance coverage and will not meet the
15 requirements of a state's financial responsibility law.

16 We may receive compensation for placing this insurance, which
17 is included in the cost of coverage charged to you.

18 The property coverage we buy will start on the date shown in
19 the policy or certificate, which may go back to the date of the
20 loan or the date your prior coverage stopped. We will cancel the
21 insurance we bought for you and give you a refund or credit of
22 unearned charges if you give us proof you have bought property
23 insurance somewhere else or if you have paid off the loan.

24 (5) All creditor-placed insurance ~~shall~~**MUST** be set forth in
25 an individual policy or certificate of insurance. ~~Not~~**SUBJECT TO**
26 **SECTION 2266, NOT** earlier than the sending of the final notice ~~nor~~
27 **OR** 25 days after a charge is made to the debtor for creditor-placed

1 insurance coverage, the creditor shall cause a copy of the
2 individual policy, certificate, or other evidence of insurance
3 coverage evidencing the creditor-placed insurance coverage to be
4 sent, first-class mail, to the debtor's last known address.

5 (6) A creditor's compliance with or failure to comply with
6 this chapter ~~shall~~ **DOES** not be construed to require the creditor to
7 purchase insurance coverage on the collateral, and the creditor is
8 not liable to the debtor or a third party ~~as a result~~ **BECAUSE** of
9 its failure to purchase the insurance.

10 Sec. 2248. (1) A policy of insurance against fire, theft,
11 property damage, collision, or liability ~~in connection with~~
12 ~~automobile coverage shall~~ **MUST** not be issued unless the policy, or
13 an exact copy of the policy, is delivered to the insured.

14 (2) For purposes of this section, a personal ~~automobile~~
15 insurance policy and endorsements that do not contain personally
16 identifiable information may be delivered by mailing, delivery, or
17 posting on the insurer's internet website. If the insurer elects to
18 post an insurance policy and endorsements on its internet website
19 ~~in lieu~~ **INSTEAD** of mailing or delivering them to the named insured,
20 the insurer shall comply with all of the following conditions:

21 (a) The policy and endorsements are easily accessible and
22 remain easily accessible ~~for as long as~~ **WHILE** the policy is in
23 force.

24 (b) After the expiration of the policy, the insurer archives
25 the policy and endorsements and makes them available on request at
26 no charge or for a reasonable charge.

27 (c) The policy and endorsements are posted in a manner that

1 enables the insured to print and save the policy and endorsements
2 using programs or applications that are widely available on the
3 internet and free to use.

4 (d) The insurer provides notice to the named insured with each
5 declarations page of a method by which an insured may obtain, on
6 request and without charge, a paper or electronic copy of the
7 policy or endorsements.

8 (e) On each declarations page issued to ~~an~~**THE** insured, the
9 insurer clearly identifies the exact policy and endorsement forms
10 purchased by the insured.

11 (f) The insurer provides notice, in the manner by which it
12 customarily communicates with a named insured, of any of the
13 changes to the forms or endorsements and ~~the~~**AN** insured's right to
14 obtain, on request and without charge, a paper copy of the forms or
15 endorsements.

16 **SEC. 2266. (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, A**
17 **NOTICE TO A PARTY OR ANY OTHER DOCUMENT THAT IS REQUIRED IN AN**
18 **INSURANCE TRANSACTION OR THAT IS TO SERVE AS EVIDENCE OF INSURANCE**
19 **COVERAGE MAY BE DELIVERED, STORED, AND PRESENTED BY ELECTRONIC**
20 **MEANS IF IT MEETS THE REQUIREMENTS OF THE UNIFORM ELECTRONIC**
21 **TRANSACTIONS ACT, 2000 PA 305, MCL 450.831 TO 450.849.**

22 **(2) ELECTRONIC DELIVERY OF A NOTICE OR DOCUMENT AS PROVIDED IN**
23 **THIS SECTION IS EQUIVALENT TO ANY DELIVERY METHOD OTHERWISE**
24 **REQUIRED BY LAW, INCLUDING DELIVERY BY FIRST-CLASS MAIL, FIRST-**
25 **CLASS MAIL POSTAGE PREPAID, CERTIFIED MAIL, OR CERTIFICATE OF**
26 **MAILING.**

27 **(3) IF AN INSURER HAS REASON TO BELIEVE THAT A PARTY IS NOT**

1 RECEIVING NOTICES OR DOCUMENTS THAT THE INSURER ATTEMPTS TO DELIVER
2 BY ELECTRONIC MEANS, INCLUDING IF THE INSURER ATTEMPTS DELIVERY BY
3 ELECTRONIC MEANS AND RECEIVES A NOTICE THAT THE DELIVERY BY
4 ELECTRONIC MEANS HAS FAILED, THE INSURER SHALL DELIVER THE NOTICES
5 OR DOCUMENTS BY FIRST-CLASS MAIL OR BY ANY OTHER DELIVERY METHOD
6 REQUIRED FOR THE NOTICES OR DOCUMENTS.

7 (4) AN INSURER MAY USE ELECTRONIC DELIVERY OF A NOTICE OR A
8 DOCUMENT TO A PARTY UNDER THIS SECTION IF THE INSURER MEETS THE
9 REQUIREMENTS OF SUBSECTION (5) AND IF ALL OF THE FOLLOWING
10 REQUIREMENTS ARE MET:

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

13 (B) BEFORE GIVING CONSENT, THE INSURER PROVIDES THE PARTY WITH
14 A CLEAR AND CONSPICUOUS STATEMENT INFORMING THE PARTY OF ALL OF THE
15 FOLLOWING:

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

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

22 (iii) THE SPECIFIC NOTICE OR DOCUMENT OR CATEGORIES OF NOTICES
23 OR DOCUMENTS THAT MAY BE DELIVERED BY ELECTRONIC MEANS DURING THE
24 COURSE OF THE RELATIONSHIP BETWEEN THE INSURER AND THE PARTY.

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

1 (v) THE PROCEDURES FOR THE PARTY TO FOLLOW TO UPDATE
2 INFORMATION NEEDED TO CONTACT THE PARTY ELECTRONICALLY AND TO
3 WITHDRAW CONSENT TO HAVE A NOTICE OR A DOCUMENT DELIVERED BY
4 ELECTRONIC MEANS.

5 (c) BEFORE GIVING CONSENT, THE INSURER PROVIDES THE PARTY WITH
6 A STATEMENT OF THE HARDWARE AND SOFTWARE REQUIREMENTS FOR ACCESS TO
7 AND RETENTION OF A NOTICE OR DOCUMENT DELIVERED BY ELECTRONIC
8 MEANS. THE PARTY SHALL PROVIDE ELECTRONIC CONSENT TO THE HARDWARE
9 AND SOFTWARE REQUIREMENTS OR CONFIRM CONSENT ELECTRONICALLY IN A
10 MANNER THAT REASONABLY DEMONSTRATES THAT THE PARTY CAN ACCESS
11 INFORMATION IN THE ELECTRONIC FORM THAT WILL BE USED FOR NOTICES OR
12 DOCUMENTS DELIVERED BY ELECTRONIC MEANS.

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

20 (a) INFORMATION REGARDING THE REVISED HARDWARE OR SOFTWARE
21 REQUIREMENTS FOR ACCESS TO AND RETENTION OF A NOTICE OR DOCUMENT
22 DELIVERED BY ELECTRONIC MEANS.

23 (b) A DESCRIPTION OF THE RIGHT OF THE PARTY TO WITHDRAW
24 CONSENT WITHOUT THE IMPOSITION OF ANY CONDITION OR CONSEQUENCE THAT
25 WAS NOT DISCLOSED UNDER SUBSECTION (4) (B) (ii) .

26 (6) WITHDRAWAL OF CONSENT TO ELECTRONIC DELIVERY DOES NOT
27 AFFECT THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF A

1 NOTICE OR A DOCUMENT THAT IS DELIVERED BY ELECTRONIC MEANS TO A
2 PARTY BEFORE THE WITHDRAWAL OF CONSENT IS EFFECTIVE.

3 (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
4 WITHDRAWAL OF CONSENT BY A PARTY BECOMES EFFECTIVE 15 DAYS AFTER
5 THE INSURER RECEIVES NOTICE OF THE WITHDRAWAL. A WITHDRAWAL BECOMES
6 EFFECTIVE IMMEDIATELY IF THE INSURER LEARNS THAT THE ELECTRONIC
7 DELIVERY METHOD CURRENTLY USED IS NO LONGER AN EFFECTIVE DELIVERY
8 MECHANISM.

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

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

14 (10) AS USED IN THIS SECTION:

15 (A) "DELIVERED BY ELECTRONIC MEANS", "DELIVERY BY ELECTRONIC
16 MEANS", OR "ELECTRONIC DELIVERY" MEAN DELIVERY BY EITHER OF THE
17 FOLLOWING METHODS:

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

20 (ii) BOTH OF THE FOLLOWING:

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

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

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