

Act No. 205  
Public Acts of 2018  
Approved by the Governor  
June 19, 2018  
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June 20, 2018  
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**STATE OF MICHIGAN**  
**99TH LEGISLATURE**  
**REGULAR SESSION OF 2018**

Introduced by Reps. Theis, Leutheuser, Bizon, Webber, Love, Kelly, Alexander, Vaupel, Calley and Kahle

**ENROLLED HOUSE BILL No. 5430**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” (MCL 500.100 to 500.8302) by adding section 2266.

*The People of the State of Michigan enact:*

Sec. 2266. (1) Subject to the requirements of this section, 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 may be delivered, stored, and presented by electronic means if it meets both of the following:

- (a) The requirements of the uniform electronic transactions act, 2000 PA 305, MCL 450.831 to 450.849.

(b) For a health insurer, the requirements of section 2236(9)(a)(ii).

(2) Electronic delivery of a notice or document as provided in this section is 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.

(3) If an insurer has reason to believe that a party is not receiving notices or documents that the insurer attempts to deliver by electronic means, including if the insurer attempts delivery by electronic means and receives a notice that the delivery by electronic means has failed, the insurer shall deliver the notices or documents by first-class mail or by any other delivery method required for the notices or documents.

(4) An insurer may use electronic delivery of a notice or a document to a party under this section if the insurer meets the requirements of subsection (5) and if all of the following requirements are met:

(a) The party has affirmatively consented to the electronic delivery method and has not withdrawn consent.

(b) Before obtaining consent, the insurer provides the party with a clear and conspicuous statement informing the party of all of the following:

(i) 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.

(ii) 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 is withdrawn.

(iii) The specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party.

(iv) The means, after consent is given, by which the party may obtain a paper copy of a notice or document delivered by electronic means.

(v) 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.

(c) Before obtaining consent, the insurer provides the party with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means. The party shall provide electronic consent to the hardware and software requirements or confirm consent electronically in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means.

(5) After the party consents as provided in subsection (4), if a change occurs in hardware or software needed to access or retain a notice or document delivered by electronic means that creates a material risk that the party will not be able to access or retain a notice or document to which consent applies, the insurer shall provide the party with a statement that includes all of the following:

(a) Information regarding the revised hardware or software requirements for access to and retention of a notice or document delivered by electronic means.

(b) A description of the right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed under subsection (4)(b)(ii).

(6) Withdrawal of consent to electronic delivery does not affect the legal effectiveness, validity, or enforceability of a notice or a document that is delivered by electronic means to a party before the withdrawal of consent is effective.

(7) Except as otherwise provided in this subsection, withdrawal of consent by a party becomes effective 30 days after the insurer receives notice of the withdrawal. Consent is automatically withdrawn if the insurer learns that the electronic delivery method currently used is no longer an effective delivery mechanism.

(8) Failure by an insurer to comply with subsection (5) may be treated, at the election of the party, as a withdrawal of consent.

(9) This section must not be construed to modify, limit, or supersede the federal electronic signatures in global national commerce act, 15 USC 7001 to 7031.

(10) An insurance producer is not subject to civil liability for any harm or injury to a party that occurs as a result of either of the following:

(a) The party's consent under subsection (4) to receive a notice or a document delivered by electronic means under this section.

(b) An insurer's failure to deliver a notice or document by electronic means unless the insurance producer causes the harm or injury.

(11) As used in this section:

(a) "Delivered by electronic means", "delivery by electronic means", or "electronic delivery" mean delivery by either of the following methods:

(i) Delivery to an electronic mail address at which a party has consented to receive notices or documents.

(ii) Both of the following:

(A) 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.

(B) Sending separate notice of the posting described in sub-subparagraph (A) 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.

(b) "Party" means a recipient of a notice or document required as part of an insurance transaction and includes an applicant, insured, policy holder, or annuity contract holder.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor