

HOUSE BILL NO. 5057

June 17, 2021, Introduced by Reps. Posthumus, Outman and Griffin and referred to the Committee on Regulatory Reform.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 1201, 1202, and 2266 (MCL 500.1201, 500.1202, and 500.2266), section 1201 as amended by 2018 PA 449, section 1202 as amended by 2020 PA 266, and section 2266 as amended by 2018 PA 429, and by adding chapter 12C.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1201. As used in this chapter:
- 2 (a) "Agent" except as provided in section 1243 means an

1 insurance producer.

2 (b) "Agent of the insured" means an insurance producer who is
3 not an appointed insurance producer of the insurer with which the
4 insurance policy is placed. An agent of the insured is treated as
5 representing the insured or the insured's beneficiary and not the
6 insurer.

7 (c) "Agent of the insurer" means an insurance producer who
8 sells, solicits, or negotiates an application for insurance as a
9 representative of the insurer and not the insured or the insured's
10 beneficiary.

11 (d) "Business entity" means a corporation, association,
12 partnership, limited liability company, limited liability
13 partnership, or other legal entity.

14 (e) "Home state", except as provided in section 1224, means
15 the District of Columbia or any state or territory of the United
16 States in which an insurance producer maintains his or her
17 principal place of residence or principal place of business and is
18 licensed to act as an insurance producer.

19 (f) "Insurance" means any of the lines of authority in chapter
20 6.

21 (g) "Insurance producer" means a person required to be
22 licensed under the laws of this state to sell, solicit, or
23 negotiate insurance.

24 (h) "License" means a document issued by the director
25 authorizing a person to act as an insurance producer for the
26 qualifications specified in the document. The license itself does
27 not create any actual, apparent, or inherent authority in the
28 holder to represent or commit an insurer.

29 (i) "Limited line credit insurance" includes credit life,

1 credit disability, credit property, credit unemployment,
 2 involuntary unemployment, mortgage life, mortgage guaranty,
 3 mortgage disability, guaranteed automobile protection insurance,
 4 and any other form of insurance offered in connection with an
 5 extension of credit that is limited to partially or wholly
 6 extinguishing that credit obligation that the director determines
 7 should be designated a form of limited line credit insurance.

8 (j) "Limited line credit insurance producer" means a person
 9 who sells, solicits, or negotiates 1 or more forms of limited line
 10 credit insurance coverage to individuals through a master,
 11 corporate, group, or individual policy.

12 (k) "Limited lines insurance" means any of the following:

- 13 (i) Marine insurance as defined in section 614.
- 14 (ii) Credit insurance as described in section 624(1)(e).
- 15 (iii) Surety and fidelity insurance as defined in section 628.
- 16 (iv) Legal expense insurance as defined in section 618.
- 17 (v) Livestock insurance as described in section 624(1)(g).
- 18 (vi) Malpractice insurance as described in section 624(1)(h).
- 19 (vii) Plate glass insurance as described in section 624(1)(c).
- 20 (viii) Any other miscellaneous insurance described in section
 21 624(1)(i).

22 **(ix) Portable electronics insurance as defined in section 1292.**

23 (x) ~~(ix)~~ Any other line of insurance that the director
 24 considers necessary to recognize to comply with section 1206a(5).

25 (l) "Limited lines producer" means a person authorized by the
 26 director to sell, solicit, or negotiate limited lines insurance.

27 (m) "Negotiate" means the act of conferring directly with or
 28 offering advice directly to a purchaser or prospective purchaser of
 29 a particular contract of insurance concerning any of the

1 substantive benefits, terms, or conditions of the contract, if the
2 person engaged in that act either sells insurance or obtains
3 insurance from insurers for purchasers.

4 (n) "Sell" means to exchange a contract of insurance by any
5 means, for money or its equivalent, on behalf of an insurance
6 company.

7 (o) "Solicit" means attempting to sell insurance or asking or
8 urging a person to apply for a particular kind of insurance from a
9 particular company.

10 (p) "Terminate" means the cancellation of the relationship
11 between an insurance producer and the insurer or the termination of
12 a producer's authority to transact insurance.

13 Sec. 1202. (1) This chapter does not require an insurer to
14 obtain an insurance producer license. As used in this section, the
15 term "insurer" does not include an insurer's officers, directors,
16 employees, subsidiaries, or affiliates.

17 (2) A license as an insurance producer is not required of any
18 of the following:

19 (a) An officer, director, or employee of an insurer or of an
20 insurance producer, if the officer, director, or employee does not
21 receive any commission on policies written or sold to insure risks
22 residing, located, or to be performed in this state and meets 1 or
23 more of the following:

24 (i) The officer's, director's, or employee's activities are
25 executive, administrative, managerial, clerical, or a combination
26 of these, and are only indirectly related to the sale,
27 solicitation, or negotiation of insurance.

28 (ii) The officer's, director's, or employee's function relates
29 to underwriting, loss control, inspection, or the processing,

1 adjusting, investigating, or settling of a claim on a contract of
2 insurance.

3 (iii) The officer, director, or employee is acting in the
4 capacity of a special agent or agency supervisor assisting
5 insurance producers if the person's activities are limited to
6 providing technical advice and assistance to licensed insurance
7 producers and do not include the sale, solicitation, or negotiation
8 of insurance.

9 (b) A person who performs and receives no commission for any
10 of the following services:

11 (i) Securing and furnishing information for the purpose of
12 group life insurance, group property and casualty insurance, group
13 annuities, or group or blanket accident and health insurance.

14 (ii) Securing and furnishing information for the purpose of
15 enrolling individuals under plans, issuing certificates under
16 plans, or otherwise assisting in administering plans.

17 (iii) Performing administrative services related to mass
18 marketed property and casualty insurance.

19 (c) An employer or association or its officers, directors,
20 employees, or the trustees of an employee trust plan, to the extent
21 that the employers, officers, employees, directors, or trustees are
22 engaged in the administration or operation of a program of employee
23 benefits for the employer's or association's own employees or the
24 employees of its subsidiaries or affiliates, which program involves
25 the use of insurance issued by an insurer, if the employers,
26 associations, officers, directors, employees, or trustees are not
27 in any manner compensated, directly or indirectly, by the company
28 issuing the contracts.

29 (d) Employees of insurers or organizations employed by

1 insurers who are engaging in the inspection, rating, or
2 classification of risks, or in the supervision of the training of
3 insurance producers and who are not individually engaged in the
4 sale, solicitation, or negotiation of insurance.

5 (e) A person whose activities in this state are limited to
6 advertising without the intent to solicit insurance in this state
7 through communications in printed publications or other forms of
8 electronic mass media, the distribution of which is not limited to
9 residents of this state, if the person does not sell, solicit, or
10 negotiate insurance that would insure risks residing, located, or
11 to be performed in this state.

12 (f) A person who is not a resident of this state who sells,
13 solicits, or negotiates a contract of insurance for commercial
14 property and casualty risks to an insured with risks located in
15 more than 1 state insured under that contract, if the person is
16 otherwise licensed as an insurance producer to sell, solicit, or
17 negotiate that insurance in the state where the insured maintains
18 its principal place of business and the contract of insurance
19 insures risks located in that state.

20 (g) A salaried full-time employee who counsels or advises his
21 or her employer concerning the insurance interests of the employer
22 or of the subsidiaries or business affiliates of the employer, if
23 the employee does not sell or solicit insurance or receive a
24 commission.

25 (h) A person whose only sale of insurance is for travel or
26 auto-related insurance sold in connection with and incidental to
27 the rental of a motor vehicle under a rental agreement for a period
28 not to exceed 90 days.

29 (i) ~~A-Subject to subsection (3),~~ a person whose only sale of

1 insurance is for portable electronics insurance sold in connection
2 with and incidental to the sale of a portable electronic device if
3 written disclosure material is provided to the customer at the time
4 of solicitation and the written material includes all of the
5 following:

6 (i) A disclosure that portable electronics insurance may
7 duplicate coverage already provided by the customer's homeowners,
8 renters, or other insurance policies.

9 (ii) A statement that the enrollment by the customer in a
10 portable electronics insurance program is not required to purchase
11 or lease a portable electronic device or services for the device.

12 (iii) A summary of the material terms of the portable
13 electronics insurance coverage, including all of the following:

14 (A) The identity of the insurer.

15 (B) The amount of any applicable deductible and how it is to
16 be paid.

17 (C) The benefits of the coverage.

18 (D) Key terms and conditions of the coverage, such as whether
19 the portable electronics may be repaired or replaced with a similar
20 make and model or reconditioned or nonoriginal manufacturer parts
21 or equipment.

22 (iv) A summary of the process for filing a claim, including a
23 description of how to return a portable electronic device and the
24 maximum fee applicable if the customer fails to comply with
25 equipment return requirements.

26 (v) A statement that the customer may cancel enrollment for
27 coverage under a portable electronics insurance policy at any time
28 and that the person paying the premium will receive a refund of or
29 credit for any unearned premium.

1 (j) A person whose only sale of insurance is for travel
2 insurance sold in conjunction with and incidental to planned
3 travel.

4 (k) A person whose only sale of insurance is stored property
5 insurance sold in connection with and incidental to the rental of
6 storage space in a self-service storage facility under a rental
7 agreement for a period not to exceed 1 year if written disclosure
8 material is provided to the customer at the time of solicitation
9 and the written material includes all of the following:

10 (i) A disclosure that the stored property insurance may
11 duplicate coverage already provided by the customer's homeowners,
12 renters, or other insurance policies.

13 (ii) A summary of the material terms of the stored property
14 insurance coverage, including all of the following:

15 (A) The identity of the insurer.

16 (B) The benefits of the coverage.

17 (C) The key terms and conditions of the coverage.

18 (iii) A summary of the process for filing a claim.

19 **(3) Subsection (2) (i) does not apply after 60 days after the**
20 **department furnishes a limited line portable electronics insurance**
21 **producer license application under section 1298.**

22 **(4) ~~(3)~~—As used in this section:**

23 (a) "Motor vehicle" means a motorized vehicle designed for
24 transporting passengers or goods.

25 (b) "Self-service storage facility" means that term as defined
26 in section 2 of the self-service storage facility act, 1985 PA 148,
27 MCL 570.522.

28 (c) "Stored property insurance" means insurance that provides
29 coverage for the loss of, or damage to, tangible personal property

1 with an insured value not exceeding \$10,000.00 contained in a
2 storage space located on a self-service storage facility or in
3 transit during the term of a self-service storage facility rental
4 agreement and that is provided under a group or master policy
5 issued to a self-service storage facility for the provision of
6 insurance to its customers.

7 (d) "Travel insurance" means, subject to subdivision (e), a
8 limited lines insurance coverage under section 1201(k) for personal
9 risk incident to planned travel, including 1 or more of the
10 following:

11 (i) Interruption or cancellation of a trip or event.

12 (ii) Loss of baggage or personal effects.

13 (iii) Damages to accommodations or rental vehicles.

14 (iv) Sickness, accident, disability, or death occurring during
15 travel.

16 (v) Emergency evacuation.

17 (vi) Repatriation of remains.

18 (vii) Any other contractual obligations to indemnify or pay a
19 specified amount to the traveler on determinable contingencies
20 related to travel as approved by the director.

21 (e) "Travel insurance" does not include either of the
22 following:

23 (i) Major medical plans, which provide comprehensive medical
24 protection for travelers with trips lasting longer than 6 months,
25 including, for example, those working or residing overseas as an
26 expatriate, or military personnel being deployed.

27 (ii) A product that requires a specific insurance producer's
28 license.

29 (iii) A prearranged funeral agreement by a funeral service

1 provider.

2 Chapter 12C

3 PORTABLE ELECTRONICS INSURANCE

4 Sec. 1292. As used in this chapter:

5 (a) "Customer" means a person that purchases portable
6 electronics or services.

7 (b) "Enrolled customer" means a customer that elects coverage
8 under a portable electronics insurance policy issued to a vendor.

9 (c) "License" means that term as defined in section 1201.

10 (d) "Limited line portable electronics insurance producer"
11 means a vendor that holds a license issued under this chapter.

12 (e) "Location" means a physical location in this state or a
13 website, call center site, or similar location directed to
14 residents of this state.

15 (f) "Portable electronic device" means an electronic device
16 that is portable and includes accessories or services related to
17 the use of that electronic device.

18 (g) "Portable electronics insurance" means insurance that
19 provides coverage for the repair or replacement of a portable
20 electronic device, including, but not limited to, insurance that
21 provides coverage for a portable electronic device against loss,
22 theft, inoperability because of mechanical failure, malfunction,
23 damage, or other similar causes of loss. Portable electronics
24 insurance does not include any of the following:

25 (i) A service contract as that term is defined in section 125.

26 (ii) A policy of insurance covering a seller's or
27 manufacturer's obligations under a warranty.

28 (iii) A homeowner's, renter's, automobile insurance (limited),
29 or similar insurance policy.

1 (h) "Portable electronics insurance program" means a program
2 established by a vendor in which the vendor enrolls a customer in
3 portable electronics insurance coverage sold or offered under
4 section 1293.

5 (i) "Portable electronics transaction" means any of the
6 following:

7 (i) A sale or lease of a portable electronic device.

8 (ii) A sale of a service related to a portable electronic
9 device.

10 (j) "Supervising entity" means a business entity that is an
11 insurance producer or insurer.

12 (k) "Vendor" means a person in the business of directly or
13 indirectly engaging in portable electronics transactions.

14 Sec. 1293. (1) A vendor who is not an insurance producer shall
15 not sell or offer coverage under a portable electronics insurance
16 policy to a customer unless the vendor is a limited line portable
17 electronics insurance producer. A license issued to a vendor under
18 this chapter authorizes any employee or authorized representative
19 of the vendor to sell or offer coverage under a policy of portable
20 electronics insurance to a customer at any location at which the
21 vendor engages in portable electronics transactions.

22 (2) The supervising entity shall maintain a registry of
23 locations that are authorized to sell or solicit portable
24 electronics insurance in this state. On the director's request and
25 within 10 days' notice to the supervising entity, the registry must
26 be open to inspection and examination by the director during the
27 vendor's regular business hours.

28 Sec. 1294. (1) At each location where a vendor offers portable
29 electronics insurance to customers, the vendor shall make brochures

1 or other written materials available to a prospective customer. The
2 brochures or other written materials must do all of the following:

3 (a) Disclose that portable electronics insurance may provide a
4 duplication of coverage already provided by the customer's
5 homeowner's insurance policy, renter's insurance policy, or other
6 insurance coverage.

7 (b) State that the enrollment by the customer in a portable
8 electronics insurance program is not required to purchase or lease
9 a portable electronic device or services for the device.

10 (c) Summarize the material terms of the portable electronics
11 insurance coverage, including at least all of the following:

12 (i) The identity of the insurer.

13 (ii) The identity of the supervising entity.

14 (iii) The amount of any applicable deductible and how it is to
15 be paid.

16 (iv) Benefits of the coverage.

17 (v) Key terms and conditions of the coverage, such as whether
18 portable electronics may be repaired or replaced with similar make
19 and model reconditioned or nonoriginal manufacturer parts or
20 equipment.

21 (d) Summarize the process for filing a claim, including a
22 description of how to return a portable electronic device and the
23 maximum fee applicable if the customer fails to comply with any
24 equipment return requirements.

25 (e) State that the customer may cancel enrollment for coverage
26 under a portable electronics insurance policy at any time and that
27 the person paying the premium will receive a refund of any
28 applicable unearned premium.

29 (2) The written materials required by this section are not

1 subject to filing or approval requirements with the director.

2 (3) Portable electronics insurance may be offered on a month-
3 to-month or other periodic basis as a group or master commercial
4 marine insurance policy issued to the vendor for its enrolled
5 customers. As used in this subsection, "marine insurance" means
6 marine insurance as described in section 614(2).

7 (4) An insurer issuing a policy of portable electronics
8 insurance shall establish eligibility and underwriting standards
9 for customers electing to enroll in coverage for each portable
10 electronics insurance program.

11 Sec. 1295. (1) An employee or authorized representative of a
12 vendor may sell or offer portable electronics insurance under this
13 chapter to customers without an insurance producer license if all
14 of the following conditions are met:

15 (a) The vendor that employs the employee or authorized
16 representative is a limited line portable electronics insurance
17 producer that authorizes its employees or authorized
18 representatives to sell or offer portable electronics insurance.

19 (b) The insurer issuing the portable electronics insurance
20 coverage either directly supervises or appoints a supervising
21 entity to supervise the administration of the portable electronics
22 insurance coverage program, including development of a training
23 program for employees and authorized representatives of the
24 vendors. The training required under this subdivision must comply
25 with all of the following:

26 (i) The training must be delivered to employees and authorized
27 representatives of a vendor who are directly engaged in the
28 activity of selling or offering portable electronics insurance
29 coverage.

1 (ii) The training may be provided in electronic form. If the
2 training is conducted in electronic form, the supervising entity
3 shall implement a supplemental education program regarding portable
4 electronics insurance that is conducted and overseen by employees
5 of the supervising entity who are licensed insurance producers.

6 (iii) The training must provide basic instruction about the
7 portable electronics insurance coverage offered to customers and
8 the disclosures required under section 1294.

9 (c) An employee or authorized representative of a vendor
10 described in subdivision (a) does not advertise, represent, or
11 otherwise hold himself or herself out as an insurance producer.

12 (2) A vendor shall not compensate the vendor's employee or
13 authorized representative based primarily on the number of
14 customers enrolled for portable electronics insurance coverage. A
15 vendor may compensate the vendor's employee or authorized
16 representative for activities under the vendor's limited line
17 portable electronics insurance producer license that are incidental
18 to the employee's or authorized representative's overall
19 compensation.

20 (3) A vendor may bill and collect the charges for portable
21 electronics insurance coverage. A vendor shall separately itemize
22 on the enrolled customer's bill any charge for coverage that is not
23 included in the cost associated with the purchase or lease of a
24 portable electronic device or related services. If the portable
25 electronics insurance coverage is included with the purchase or
26 lease of a portable electronic device or related services, the
27 vendor shall clearly and conspicuously disclose to the enrolled
28 customer that the portable electronics insurance coverage is
29 included with the portable electronic device or related services. A

1 vendor that bills and collects charges as allowed under this
2 subsection is not required to maintain the proceeds in a segregated
3 account if the vendor is authorized by the insurer to hold the
4 proceeds in an alternative manner and remits those proceeds to the
5 supervising entity within 60 days after receiving them. All money
6 received by a vendor from an enrolled customer from the purchase of
7 portable electronics insurance is considered money held in trust by
8 the vendor in a fiduciary capacity for the benefit of the insurer.
9 The insurer may compensate the vendor for billing and collection
10 services described in this subsection.

11 Sec. 1296. If a vendor or an employee or authorized
12 representative of a vendor violates this chapter, the director may
13 do any of the following:

14 (a) After notice and hearing, impose an administrative fine of
15 not more than \$500.00 for each violation. However, the director may
16 not assess administrative fines under this chapter against any
17 person that in the aggregate are more than \$5,000.00 for multiple
18 violations that involve the same conduct, action, or practice.

19 (b) After notice and hearing, impose other penalties that the
20 director considers necessary and reasonable to carry out the
21 purpose of this act, including, but not limited to, any of the
22 following:

23 (i) Suspending the vendor's limited line portable electronics
24 insurance producer license.

25 (ii) Suspending or revoking the ability of individual employees
26 or authorized representatives to act under the vendor's license.

27 Sec. 1297. (1) Except as provided in subsections (2) and (3),
28 an insurer shall not terminate or otherwise change the terms and
29 conditions of a portable electronics insurance policy unless the

1 insurer provides the vendor that is the policyholder and enrolled
2 customers with at least 30 days' notice of the termination or
3 change. If the insurer changes the terms and conditions of the
4 policy, the insurer shall provide the vendor that is the
5 policyholder with a revised policy or endorsement and each enrolled
6 customer with a revised certificate, endorsement, updated brochure,
7 or other evidence indicating that a change in the terms and
8 conditions has occurred and a summary of material changes.

9 (2) An insurer may terminate an enrolled customer's enrollment
10 under a portable electronics insurance policy 15 days after
11 providing notice to the customer if the insurer discovers fraud or
12 material misrepresentation in obtaining coverage or in the
13 presentation of a claim under the policy.

14 (3) An insurer may immediately terminate an enrolled
15 customer's enrollment under a portable electronics insurance policy
16 for any of the following reasons:

17 (a) Nonpayment of premium.

18 (b) The enrolled customer has ceased to have an active service
19 with the vendor of the portable electronic device.

20 (c) The enrolled customer has exhausted the aggregate limit of
21 liability, if any, under the terms of the portable electronics
22 insurance policy and the insurer has sent notice of termination to
23 the enrolled customer within 30 calendar days after exhaustion of
24 the limit. However, if notice is not timely sent, enrollment must
25 continue notwithstanding that the aggregate limit of liability has
26 been exhausted until the insurer sends notice of termination to the
27 enrolled customer.

28 (4) If a portable electronics insurance policy is terminated
29 by a vendor policyholder, the vendor policyholder shall mail or

1 deliver written notice to each enrolled customer advising the
2 enrolled customer of the termination of the policy and the
3 effective date of termination. The vendor policyholder shall mail
4 or deliver the written notice to the enrolled customer at least 30
5 days before the vendor policyholder terminates the portable
6 electronics insurance policy.

7 (5) Any notice or correspondence required under this chapter
8 must be in writing. A notice or correspondence may be sent by mail
9 or by electronic means as provided in this subsection. If the
10 notice or correspondence is mailed, it must be sent to the vendor
11 of portable electronics at the vendor's mailing address specified
12 for such purpose and to its affected enrolled customers' last known
13 mailing addresses on file with the insurer. The insurer or vendor
14 of portable electronics, as applicable, shall maintain proof of
15 mailing in a form authorized or accepted by the United States
16 Postal Service or other commercial mail delivery service. If the
17 notice or correspondence is sent by electronic means, it must be
18 sent to the vendor of portable electronics at the vendor's email
19 address specified for such purpose and to its affected enrolled
20 customers' last known email address as provided by each enrolled
21 customer to the insurer or vendor of portable electronics, as the
22 case may be. For purposes of this subsection, an enrolled
23 customer's provision of an email address to the insurer or vendor
24 of portable electronics, as applicable, is considered consent to
25 receive notices and correspondence by electronic means. The insurer
26 or vendor of portable electronics, as applicable, shall maintain
27 proof that the notice or correspondence was sent.

28 (6) A notice or correspondence required by this section or
29 otherwise required by law may be sent on behalf of an insurer or

1 vendor, as applicable, by the supervising entity appointed by the
2 insurer.

3 Sec. 1298. (1) A vendor seeking a limited line portable
4 electronics insurance producer license under this chapter shall
5 file a sworn application for a license with the department on forms
6 prescribed and furnished by the department. The department shall
7 develop and furnish the application under this subsection.

8 (2) An application for a license under this chapter must do
9 all of the following:

10 (a) Provide the name, residence address, and other information
11 required by the office for an employee or officer of the vendor
12 that is designated by the applicant as the person responsible for
13 the vendor's compliance with the requirements of this chapter.
14 However, if the vendor derives more than 50% of its revenue from
15 the sale of portable electronics insurance, the vendor shall
16 provide the name, residence address, and other information required
17 by the department of all of the vendor's officers, directors, and
18 shareholders of record who have beneficial ownership of 10% or more
19 of any class of securities registered under federal securities
20 laws.

21 (b) Provide the location of the applicant's home office.

22 (3) An initial limited line portable electronics insurance
23 producer license issued under this chapter expires 24 months after
24 the issue date assigned by the department.

25 (4) A vendor licensed under this chapter shall pay the
26 department a fee in the amount determined by the department. The
27 fee established by the department must not exceed \$1,000.00 for an
28 initial limited line portable electronics insurance producer
29 license or \$500.00 for each renewal of that license. However, if a

1 vendor is engaged in portable electronic device transactions at 10
2 or fewer locations in this state, the fee must not exceed \$100.00
3 for an initial license or a renewal.

4 Sec. 2266. (1) Subject to the requirements of this section, a
5 notice to a party or any other document that is required in an
6 insurance transaction or that is to serve as evidence of insurance
7 coverage may be delivered, stored, and presented by electronic
8 means if it meets the requirements of the uniform electronic
9 transactions act, 2000 PA 305, MCL 450.831 to 450.849.

10 (2) Electronic delivery of a notice or document as provided in
11 this section is equivalent to any delivery method otherwise
12 required by law, including delivery by first-class mail, first-
13 class mail postage prepaid, certified mail, or certificate of
14 mailing.

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

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

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

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

1 of the following:

2 (i) The right of the party at any time to have the notice or
3 the document provided or made available in paper form or by another
4 nonelectronic form.

5 (ii) The right of the party at any time to withdraw consent to
6 have a notice or document delivered by electronic means and any
7 conditions or consequences imposed if consent is withdrawn.

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

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

14 (v) The procedures for the party to follow to update
15 information needed to contact the party electronically and to
16 withdraw consent to have a notice or a document delivered by
17 electronic means.

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

26 (5) After the party consents as provided in subsection (4), if
27 a change occurs in hardware or software needed to access or retain
28 a notice or document delivered by electronic means that creates a
29 material risk that the party will not be able to access or retain a

1 notice or document to which consent applies, the insurer shall
2 provide the party with a statement that includes all of the
3 following:

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

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

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

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

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

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

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

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

1 section.

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

5 (11) This section does not apply to ~~a health~~ **either of the**
6 **following:**

7 (a) **A health** insurer or health maintenance organization.

8 (b) **Chapter 12C.**

9 (12) As used in this section:

10 (a) "Delivered by electronic means", "delivery by electronic
11 means", ~~or~~ **and** "electronic delivery" mean delivery by either of the
12 following methods:

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

15 (ii) Both of the following:

16 (A) Posting on an electronic network or site accessible by the
17 internet through use of a mobile application, computer, mobile
18 device, tablet, or any other electronic device.

19 (B) Sending separate notice of the posting described in sub-
20 subparagraph (A) to the ~~electronic mail~~ **email** address at which the
21 party consented to receive notice of the posting or using any other
22 delivery method to which the party has consented.

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