

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 674

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding section 221.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 221. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
2 AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT IS PRIVI-
3 LEGED INFORMATION AND IS NOT DISCOVERABLE OR ADMISSIBLE AS EVI-
4 DENCE IN ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING.
5 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON
6 INVOLVED IN PREPARING AN INSURANCE COMPLIANCE SELF-EVALUATIVE
7 AUDIT OR INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT IS
8 NOT SUBJECT TO EXAMINATION CONCERNING THAT AUDIT OR AUDIT DOCU-
9 MENT IN ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING.
10 HOWEVER, IF THE INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT,
11 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT, OR ANY

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1 PORTION OF THE AUDIT OR AUDIT DOCUMENT IS NOT PRIVILEGED, THE
2 INDIVIDUAL INVOLVED IN THE PREPARATION OF THE AUDIT OR AUDIT DOC-
3 UMENT MAY BE EXAMINED CONCERNING THE PORTION OF THE AUDIT OR
4 AUDIT DOCUMENT THAT IS NOT PRIVILEGED. [A PERSON INVOLVED IN
PREPARING AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT OR INSURANCE
COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT WHO BECOMES AWARE OF ANY
ALLEGED CRIMINAL VIOLATION OF THIS ACT SHALL REPORT THAT ACT TO THE
INSURER. WITHIN 30 DAYS AFTER RECEIVING THE REPORT, THE INSURER
SHALL PROVIDE THE INFORMATION TO THE COMMISSIONER.]

5 (3) AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
6 FURNISHED TO THE COMMISSIONER VOLUNTARILY OR AS A RESULT OF A
7 REQUEST OF THE COMMISSIONER UNDER A CLAIM OF AUTHORITY TO COMPEL
8 DISCLOSURE UNDER SUBSECTION (7) SHALL NOT BE PROVIDED BY THE COM-
9 MISSIONER TO ANY OTHER PERSON AND SHALL BE ACCORDED THE SAME CON-
10 FIDENTIALITY AND OTHER PROTECTIONS AS PROVIDED IN SECTION 222(7)
11 WITHOUT WAIVING THE PRIVILEGES IN SUBSECTIONS (1) AND (2). ANY
12 USE OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
13 FURNISHED VOLUNTARILY OR AS A RESULT OF A REQUEST OF THE COMMIS-
14 SIONER UNDER A CLAIM OF AUTHORITY TO COMPEL DISCLOSURE UNDER
15 SUBSECTION (7) IS LIMITED TO DETERMINING WHETHER OR NOT ANY DIS-
16 CLOSED DEFECTS IN AN INSURER'S POLICIES AND PROCEDURES OR INAP-
17 PROPRIATE TREATMENT OF CUSTOMERS HAS BEEN REMEDIED OR THAT AN
18 APPROPRIATE PLAN FOR REMEDY IS IN PLACE.

19 (4) AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
20 SUBMITTED TO THE COMMISSIONER REMAINS SUBJECT TO ALL APPLICABLE
21 STATUTORY OR COMMON LAW PRIVILEGES INCLUDING, BUT NOT LIMITED TO,
22 THE WORK PRODUCT DOCTRINE, ATTORNEY-CLIENT PRIVILEGE, OR THE SUB-
23 SEQUENT REMEDIAL MEASURES EXCLUSION. AN INSURANCE COMPLIANCE
24 SELF-EVALUATIVE AUDIT DOCUMENT SUBMITTED TO THE COMMISSIONER
25 REMAINS THE PROPERTY OF THE INSURER AND IS NOT SUBJECT TO DISCLO-
26 SURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
27 MCL 15.231 TO 15.246.

1 (5) DISCLOSURE OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE
2 AUDIT DOCUMENT TO A GOVERNMENTAL AGENCY, WHETHER VOLUNTARY OR
3 PURSUANT TO COMPULSION OF LAW, DOES NOT CONSTITUTE A WAIVER OF
4 THE PRIVILEGES UNDER SUBSECTIONS (1) AND (2) WITH RESPECT TO ANY
5 OTHER PERSON OR OTHER GOVERNMENTAL AGENCY.

6 (6) THE PRIVILEGES UNDER SUBSECTIONS (1) AND (2) DO NOT
7 APPLY TO THE EXTENT THAT THEY ARE EXPRESSLY WAIVED BY THE INSURER
8 THAT PREPARED OR CAUSED TO BE PREPARED THE INSURANCE COMPLIANCE
9 SELF-EVALUATIVE AUDIT DOCUMENT.

10 (7) THE PRIVILEGES IN SUBSECTIONS (1) AND (2) DO NOT APPLY
11 AS FOLLOWS:

12 (A) IF A COURT, AFTER AN IN CAMERA REVIEW, REQUIRES DISCLO-
13 SURE IN A CIVIL OR ADMINISTRATIVE PROCEEDING AFTER DETERMINING 1
14 OR MORE OF THE FOLLOWING:

15 (i) THE PRIVILEGE IS ASSERTED FOR A FRAUDULENT PURPOSE.

16 (ii) THE MATERIAL IS NOT SUBJECT TO THE PRIVILEGE AS PRO-
17 VIDED UNDER SUBSECTION (13).

18 (B) IF A COURT, AFTER AN IN CAMERA REVIEW, REQUIRES DISCLO-
19 SURE IN A CRIMINAL PROCEEDING AFTER DETERMINING 1 OR MORE OF THE
20 FOLLOWING:

21 (i) THE PRIVILEGE IS ASSERTED FOR A FRAUDULENT PURPOSE.

22 (ii) THE MATERIAL IS NOT SUBJECT TO THE PRIVILEGE AS PRO-
23 VIDED UNDER SUBSECTION (13).

24 (iii) THE MATERIAL CONTAINS EVIDENCE RELEVANT TO THE COMMIS-
25 SION OF A CRIMINAL OFFENSE UNDER THIS ACT.

26 (8) WITHIN 14 DAYS AFTER THE COMMISSIONER OR THE ATTORNEY
27 GENERAL MAKES A WRITTEN REQUEST BY CERTIFIED MAIL FOR DISCLOSURE

1 OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT, THE
2 INSURER THAT PREPARED THE DOCUMENT OR CAUSED THE DOCUMENT TO BE
3 PREPARED MAY FILE WITH THE INGHAM COUNTY CIRCUIT COURT A PETITION
4 REQUESTING AN IN CAMERA HEARING ON WHETHER THE INSURANCE COMPLI-
5 ANCE SELF-EVALUATIVE AUDIT DOCUMENT OR PORTIONS OF THE AUDIT DOC-
6 UMENT ARE SUBJECT TO DISCLOSURE. FAILURE BY THE INSURER TO FILE
7 A PETITION WAIVES THE PRIVILEGE PROVIDED BY THIS SECTION FOR THAT
8 REQUEST. AN INSURER ASSERTING THE INSURANCE COMPLIANCE
9 SELF-EVALUATIVE PRIVILEGE IN RESPONSE TO A REQUEST FOR DISCLOSURE
10 UNDER THIS SUBSECTION SHALL INCLUDE IN ITS REQUEST FOR AN IN
11 CAMERA HEARING ALL OF THE INFORMATION LISTED IN SUBSECTION (10).
12 WITHIN 30 DAYS AFTER THE FILING OF THE PETITION, THE COURT SHALL
13 ISSUE AN ORDER SCHEDULING AN IN CAMERA HEARING TO DETERMINE
14 WHETHER THE INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
15 OR PORTIONS OF THE AUDIT DOCUMENT ARE PRIVILEGED OR ARE SUBJECT
16 TO DISCLOSURE.

17 (9) IF THE COURT REQUIRES DISCLOSURE UNDER SUBSECTIONS (7)
18 AND (8), THE COURT MAY COMPEL THE DISCLOSURE OF ONLY THOSE POR-
19 TIONS OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
20 RELEVANT TO ISSUES IN DISPUTE IN THE UNDERLYING PROCEEDING.
21 INFORMATION REQUIRED TO BE DISCLOSED SHALL NOT BE CONSIDERED A
22 PUBLIC DOCUMENT AND SHALL NOT BE CONSIDERED TO BE A WAIVER OF THE
23 PRIVILEGE FOR ANY OTHER CIVIL, CRIMINAL, OR ADMINISTRATIVE
24 PROCEEDING.

25 (10) AN INSURER ASSERTING THE PRIVILEGE UNDER THIS SECTION
26 IN RESPONSE TO A REQUEST FOR DISCLOSURE UNDER SUBSECTION (8)
27 SHALL PROVIDE TO THE COMMISSIONER OR THE ATTORNEY GENERAL, AT THE

1 TIME OF FILING ANY OBJECTION TO THE DISCLOSURE, ALL OF THE
2 FOLLOWING INFORMATION:

3 (A) THE DATE OF THE INSURANCE COMPLIANCE SELF-EVALUATIVE
4 AUDIT DOCUMENT.

5 (B) THE IDENTITY OF THE ENTITY OR INDIVIDUAL CONDUCTING THE
6 AUDIT.

7 (C) THE GENERAL NATURE OF THE ACTIVITIES COVERED BY THE
8 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT.

9 (D) AN IDENTIFICATION OF THE PORTIONS OF THE INSURANCE COM-
10 PLIANCE SELF-EVALUATIVE AUDIT DOCUMENT FOR WHICH THE PRIVILEGE IS
11 BEING ASSERTED.

12 (11) AN INSURER ASSERTING THE PRIVILEGE UNDER THIS SECTION
13 HAS THE BURDEN OF DEMONSTRATING THE APPLICABILITY OF THE
14 PRIVILEGE. ONCE AN INSURER HAS ESTABLISHED THE APPLICABILITY OF
15 THE PRIVILEGE, A PARTY SEEKING DISCLOSURE UNDER
16 SUBSECTION (7)(A)(i) HAS THE BURDEN OF PROVING THAT THE PRIVILEGE
17 IS ASSERTED FOR A FRAUDULENT PURPOSE. THE COMMISSIONER OR ATTOR-
18 NEY GENERAL SEEKING DISCLOSURE UNDER SUBSECTION (7)(B)(iii) HAS
19 THE BURDEN OF PROVING THE ELEMENTS LISTED IN
20 SUBSECTION (7)(B)(iii).

21 (12) THE PARTIES MAY AT ANY TIME STIPULATE IN PROCEEDINGS
22 UNDER THIS SECTION TO ENTRY OF AN ORDER DIRECTING THAT SPECIFIC
23 INFORMATION CONTAINED IN AN INSURANCE COMPLIANCE SELF-EVALUATIVE
24 AUDIT DOCUMENT IS OR IS NOT SUBJECT TO THE PRIVILEGES PROVIDED
25 UNDER SUBSECTIONS (1) AND (2). ANY SUCH STIPULATION MAY BE
26 LIMITED TO THE INSTANT PROCEEDING AND, ABSENT SPECIFIC LANGUAGE
27 TO THE CONTRARY, IS NOT APPLICABLE TO ANY OTHER PROCEEDING.

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1 (13) THE PRIVILEGES PROVIDED UNDER SUBSECTIONS (1) AND (2)
2 DO NOT EXTEND TO ANY OF THE FOLLOWING:

3 (A) DOCUMENTS, COMMUNICATIONS, DATA, REPORTS, OR OTHER
4 INFORMATION EXPRESSLY REQUIRED TO BE COLLECTED, DEVELOPED, MAIN-
5 TAINED, OR REPORTED TO A REGULATORY AGENCY UNDER THIS ACT OR
6 OTHER FEDERAL OR STATE LAW.

7 (B) INFORMATION OBTAINED BY OBSERVATION OR MONITORING BY ANY
8 REGULATORY AGENCY.

9 (C) INFORMATION OBTAINED FROM A SOURCE INDEPENDENT OF THE
10 INSURANCE COMPLIANCE AUDIT.

[(D) DOCUMENTS, COMMUNICATION, DATA, REPORTS, MEMORANDA,
DRAWINGS, PHOTOGRAPHS, EXHIBITS, COMPUTER RECORDS, MAPS, CHARTS,
GRAPHS, AND SURVEYS KEPT OR PREPARED IN THE ORDINARY COURSE OF
BUSINESS.]

11 (14) THIS SECTION DOES NOT LIMIT, WAIVE, OR ABROGATE THE
12 SCOPE OR NATURE OF ANY OTHER STATUTORY OR COMMON LAW PRIVILEGE.

13 (15) AS USED IN THIS SECTION:

14 (A) "INSURANCE COMPLIANCE AUDIT" MEANS A VOLUNTARY, INTERNAL
15 EVALUATION, REVIEW, ASSESSMENT, AUDIT, OR INVESTIGATION FOR THE
16 PURPOSE OF IDENTIFYING OR PREVENTING NONCOMPLIANCE WITH OR PRO-
17 MOTING COMPLIANCE WITH LAWS, REGULATIONS, ORDERS, OR INDUSTRY OR
18 PROFESSIONAL STANDARDS, CONDUCTED BY OR ON BEHALF OF AN INSURER
19 LICENSED OR REGULATED UNDER THIS ACT OR WHICH INVOLVES AN ACTIV-
20 ITY REGULATED UNDER THIS ACT.

21 (B) "INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT"
22 MEANS A DOCUMENT PREPARED AS A RESULT OF OR IN CONNECTION WITH AN
23 INSURANCE COMPLIANCE AUDIT. AN INSURANCE COMPLIANCE
24 SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE A WRITTEN RESPONSE TO
25 THE FINDINGS OF AN INSURANCE COMPLIANCE AUDIT. AN INSURANCE COM-
26 PLIANCE SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE, BUT IS NOT
27 LIMITED TO, FIELD NOTES AND RECORDS OF OBSERVATIONS, FINDINGS,

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1 OPINIONS, SUGGESTIONS, CONCLUSIONS, DRAFTS, MEMORANDA, DRAWINGS,
2 PHOTOGRAPHS, EXHIBITS, COMPUTER-GENERATED OR ELECTRONICALLY
3 RECORDED INFORMATION, PHONE RECORDS, MAPS, CHARTS, GRAPHS, AND
4 SURVEYS, IF THIS SUPPORTING INFORMATION IS COLLECTED OR [PREPARED

5] IN THE COURSE OF AN INSURANCE COMPLI-
6 ANCE AUDIT [OR ATTACHED AS AN EXHIBIT TO THE AUDIT]. AN INSURANCE
COMPLIANCE SELF-EVALUATIVE AUDIT DOCU-

7 MENT ALSO INCLUDES, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING:

8 (i) AN INSURANCE COMPLIANCE AUDIT REPORT PREPARED BY AN
9 AUDITOR, WHO MAY BE AN EMPLOYEE OF THE INSURER OR AN INDEPENDENT
10 CONTRACTOR, WHICH MAY INCLUDE THE SCOPE OF THE AUDIT, THE INFOR-
11 MATION GAINED IN THE AUDIT, AND CONCLUSIONS AND RECOMMENDATIONS,
12 WITH EXHIBITS AND APPENDICES.

13 (ii) MEMORANDA AND DOCUMENTS ANALYZING PORTIONS OR ALL OF
14 THE INSURANCE COMPLIANCE AUDIT REPORT AND DISCUSSING POTENTIAL
15 IMPLEMENTATION ISSUES.

16 (iii) AN IMPLEMENTATION PLAN THAT ADDRESSES CORRECTING PAST
17 NONCOMPLIANCE, IMPROVING CURRENT COMPLIANCE, AND PREVENTING
18 FUTURE NONCOMPLIANCE.

19 (iv) ANALYTIC DATA GENERATED IN THE COURSE OF CONDUCTING THE
20 INSURANCE COMPLIANCE AUDIT.