

**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

SB 674, As Passed Senate, November 28, 2001

Senate Bill No. 674 as amended November 28, 2001 2

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.

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

10 AND SHALL BE ACCORDED THE SAME CONFIDENTIALITY 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.

20 (4) AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
21 SUBMITTED TO THE COMMISSIONER REMAINS SUBJECT TO ALL APPLICABLE
22 STATUTORY OR COMMON LAW PRIVILEGES INCLUDING, BUT NOT LIMITED TO,
23 THE WORK PRODUCT DOCTRINE, ATTORNEY-CLIENT PRIVILEGE, OR THE SUB-
24 SEQUENT REMEDIAL MEASURES EXCLUSION. AN INSURANCE COMPLIANCE
25 SELF-EVALUATIVE AUDIT DOCUMENT SUBMITTED TO THE COMMISSIONER
26 REMAINS THE PROPERTY OF THE INSURER AND IS NOT SUBJECT TO

SB 674, As Passed Senate, November 28, 2001

Senate Bill No. 674

3

1 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
2 MCL 15.231 TO 15.246.

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

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

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

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

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

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

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

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

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

26 (iii) THE MATERIAL CONTAINS EVIDENCE RELEVANT TO THE
27 COMMISSION OF A CRIMINAL OFFENSE UNDER THIS ACT, THE COMMISSIONER

SB 674, As Passed Senate, November 28, 2001

Senate Bill No. 674 as amended November 28, 2001

4

1 OR ATTORNEY GENERAL HAS A COMPELLING NEED FOR THE INFORMATION,
2 THE INFORMATION IS NOT OTHERWISE AVAILABLE, AND THE COMMISSIONER
3 OR ATTORNEY GENERAL IS UNABLE TO OBTAIN THE SUBSTANTIAL EQUIVA-
4 LENT OF THE INFORMATION BY ANY MEANS WITHOUT INCURRING UNREASON-
5 ABLE COST AND DELAY.

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

24 (9) IF THE COURT REQUIRES DISCLOSURE UNDER SUBSECTIONS (7)
25 AND (8), THE COURT MAY COMPEL THE DISCLOSURE OF ONLY THOSE POR-
26 TIONS OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
27 RELEVANT TO ISSUES IN DISPUTE IN THE UNDERLYING PROCEEDING.

SB 674, As Passed Senate, November 28, 2001

Senate Bill No. 674

5

1 INFORMATION REQUIRED TO BE DISCLOSED SHALL NOT BE CONSIDERED A
2 PUBLIC DOCUMENT AND SHALL NOT BE CONSIDERED TO BE A WAIVER OF THE
3 PRIVILEGE FOR ANY OTHER CIVIL, CRIMINAL, OR ADMINISTRATIVE
4 PROCEEDING.

5 (10) AN INSURER ASSERTING THE PRIVILEGE UNDER THIS SECTION
6 IN RESPONSE TO A REQUEST FOR DISCLOSURE UNDER SUBSECTION (8)
7 SHALL PROVIDE TO THE COMMISSIONER OR THE ATTORNEY GENERAL, AT THE
8 TIME OF FILING ANY OBJECTION TO THE DISCLOSURE, ALL OF THE FOL-
9 LOWING INFORMATION:

10 (A) THE DATE OF THE INSURANCE COMPLIANCE SELF-EVALUATIVE
11 AUDIT DOCUMENT.

12 (B) THE IDENTITY OF THE ENTITY OR INDIVIDUAL CONDUCTING THE
13 AUDIT.

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

16 (D) AN IDENTIFICATION OF THE PORTIONS OF THE INSURANCE COM-
17 PLIANCE SELF-EVALUATIVE AUDIT DOCUMENT FOR WHICH THE PRIVILEGE IS
18 BEING ASSERTED.

19 (11) AN INSURER ASSERTING THE PRIVILEGE UNDER THIS SECTION
20 HAS THE BURDEN OF DEMONSTRATING THE APPLICABILITY OF THE
21 PRIVILEGE. ONCE AN INSURER HAS ESTABLISHED THE APPLICABILITY OF
22 THE PRIVILEGE, A PARTY SEEKING DISCLOSURE UNDER
23 SUBSECTION (7)(A)(i) HAS THE BURDEN OF PROVING THAT THE PRIVILEGE
24 IS ASSERTED FOR A FRAUDULENT PURPOSE. THE COMMISSIONER OR ATTOR-
25 NEY GENERAL SEEKING DISCLOSURE UNDER SUBSECTION (7)(B)(iii) HAS
26 THE BURDEN OF PROVING THE ELEMENTS LISTED IN
27 SUBSECTION (7)(B)(iii).

SB 674, As Passed Senate, November 28, 2001

Senate Bill No. 674

6

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

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

10 (A) DOCUMENTS, COMMUNICATIONS, DATA, REPORTS, OR OTHER
11 INFORMATION EXPRESSLY REQUIRED TO BE COLLECTED, DEVELOPED, MAIN-
12 TAINED, OR REPORTED TO A REGULATORY AGENCY UNDER THIS ACT OR
13 OTHER FEDERAL OR STATE LAW.

14 (B) INFORMATION OBTAINED BY OBSERVATION OR MONITORING BY ANY
15 REGULATORY AGENCY.

16 (C) INFORMATION OBTAINED FROM A SOURCE INDEPENDENT OF THE
17 INSURANCE COMPLIANCE AUDIT.

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

20 (15) AS USED IN THIS SECTION:

21 (A) "INSURANCE COMPLIANCE AUDIT" MEANS A VOLUNTARY, INTERNAL
22 EVALUATION, REVIEW, ASSESSMENT, AUDIT, OR INVESTIGATION FOR THE
23 PURPOSE OF IDENTIFYING OR PREVENTING NONCOMPLIANCE WITH OR PRO-
24 MOTING COMPLIANCE WITH LAWS, REGULATIONS, ORDERS, OR INDUSTRY OR
25 PROFESSIONAL STANDARDS, CONDUCTED BY OR ON BEHALF OF AN INSURER
26 LICENSED OR REGULATED UNDER THIS ACT OR WHICH INVOLVES AN
27 ACTIVITY REGULATED UNDER THIS ACT.

SB 674, As Passed Senate, November 28, 2001

Senate Bill No. 674

7

1 (B) "INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT"
2 MEANS A DOCUMENT PREPARED AS A RESULT OF OR IN CONNECTION WITH AN
3 INSURANCE COMPLIANCE AUDIT. AN INSURANCE COMPLIANCE
4 SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE A WRITTEN RESPONSE TO
5 THE FINDINGS OF AN INSURANCE COMPLIANCE AUDIT. AN INSURANCE COM-
6 PLIANCE SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE, BUT IS NOT
7 LIMITED TO, FIELD NOTES AND RECORDS OF OBSERVATIONS, FINDINGS,
8 OPINIONS, SUGGESTIONS, CONCLUSIONS, DRAFTS, MEMORANDA, DRAWINGS,
9 PHOTOGRAPHS, EXHIBITS, COMPUTER-GENERATED OR ELECTRONICALLY
10 RECORDED INFORMATION, PHONE RECORDS, MAPS, CHARTS, GRAPHS, AND
11 SURVEYS, IF THIS SUPPORTING INFORMATION IS COLLECTED OR DEVELOPED
12 FOR THE PRIMARY PURPOSE AND IN THE COURSE OF AN INSURANCE COMPLI-
13 ANCE AUDIT. AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCU-
14 MENT ALSO INCLUDES, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING:
15 (i) AN INSURANCE COMPLIANCE AUDIT REPORT PREPARED BY AN
16 AUDITOR, WHO MAY BE AN EMPLOYEE OF THE INSURER OR AN INDEPENDENT
17 CONTRACTOR, WHICH MAY INCLUDE THE SCOPE OF THE AUDIT, THE INFOR-
18 MATION GAINED IN THE AUDIT, AND CONCLUSIONS AND RECOMMENDATIONS,
19 WITH EXHIBITS AND APPENDICES.
20 (ii) MEMORANDA AND DOCUMENTS ANALYZING PORTIONS OR ALL OF
21 THE INSURANCE COMPLIANCE AUDIT REPORT AND DISCUSSING POTENTIAL
22 IMPLEMENTATION ISSUES.
23 (iii) AN IMPLEMENTATION PLAN THAT ADDRESSES CORRECTING PAST
24 NONCOMPLIANCE, IMPROVING CURRENT COMPLIANCE, AND PREVENTING
25 FUTURE NONCOMPLIANCE.
26 (iv) ANALYTIC DATA GENERATED IN THE COURSE OF CONDUCTING THE
27 INSURANCE COMPLIANCE AUDIT.