

SENATE BILL No. 674

September 26, 2001, Introduced by Senator BULLARD and referred to the Committee on Financial Services.

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, AN INSURANCE
2 COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT IS PRIVILEGED INFORMA-
3 TION AND IS NOT DISCARDABLE OR ADMISSIBLE AS EVIDENCE IN ANY
4 CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING.

5 (2) EXCEPT AS OTHERWISE PROVIDED, A PERSON INVOLVED IN PRE-
6 PARING AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT OR INSURANCE
7 COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT IS NOT SUBJECT TO EXAM-
8 INATION CONCERNING THAT AUDIT OR AUDIT DOCUMENT IN ANY CIVIL,
9 CRIMINAL, OR ADMINISTRATIVE PROCEEDING. HOWEVER, IF THE
10 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT, INSURANCE COMPLIANCE
11 SELF-EVALUATIVE AUDIT DOCUMENT, OR ANY PORTION OF THE AUDIT OR

1 AUDIT DOCUMENT IS NOT PRIVILEGED, THE INDIVIDUAL INVOLVED IN THE
2 PREPARATION OF THE AUDIT OR AUDIT DOCUMENT MAY BE EXAMINED CON-
3 CERNING THE PORTION OF THE AUDIT OR AUDIT DOCUMENT THAT IS NOT
4 PRIVILEGED.

5 (3) AN INSURER MAY SUBMIT, IN CONNECTION WITH EXAMINATIONS
6 CONDUCTED UNDER THIS ACT, AN INSURANCE COMPLIANCE SELF-EVALUATIVE
7 AUDIT DOCUMENT TO THE COMMISSIONER OR HIS OR HER DESIGNEE AS A
8 CONFIDENTIAL DOCUMENT UNDER SECTION 222(7) WITHOUT WAIVING THE
9 PRIVILEGE IN SUBSECTIONS (1) AND (2). TO THE EXTENT THAT THE
10 COMMISSIONER HAS THE AUTHORITY TO COMPEL THE DISCLOSURE OF AN
11 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT UNDER OTHER
12 PROVISIONS OF APPLICABLE LAW, ANY SUCH REPORT FURNISHED TO THE
13 COMMISSIONER SHALL NOT BE PROVIDED TO ANY OTHER PERSONS OR ENTI-
14 TIES AND SHALL BE ACCORDED THE SAME CONFIDENTIALITY AND OTHER
15 PROTECTIONS AS PROVIDED IN SECTION 222(7). ANY USE OF AN INSUR-
16 ANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT FURNISHED AS A
17 RESULT OF A REQUEST OF THE COMMISSIONER UNDER A CLAIM OF AUTHOR-
18 ITY TO COMPEL DISCLOSURE IS LIMITED TO DETERMINING WHETHER OR NOT
19 ANY DISCLOSED DEFECTS IN AN INSURER'S POLICIES AND PROCEDURES OR
20 INAPPROPRIATE TREATMENT OF CUSTOMERS HAS BEEN REMEDIED OR THAT AN
21 APPROPRIATE PLAN FOR REMEDY IS IN PLACE.

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

1 REMAINS THE PROPERTY OF THE INSURER AND IS NOT SUBJECT TO
2 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
3 MCL 15.231 TO 15.246.

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

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

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

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

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

19 (ii) THE MATERIAL IS NOT SUBJECT TO THE PRIVILEGE.

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.

25 (iii) THE MATERIAL CONTAINS EVIDENCE RELEVANT TO THE COMMIS-
26 SION OF A CRIMINAL OFFENSE UNDER THIS ACT, THE COMMISSIONER OR
27 ATTORNEY GENERAL HAS A COMPELLING NEED FOR THE INFORMATION, THE

1 INFORMATION IS NOT OTHERWISE AVAILABLE, AND THE COMMISSIONER OR
2 ATTORNEY GENERAL IS UNABLE TO OBTAIN THE SUBSTANTIAL EQUIVALENT
3 OF THE INFORMATION BY ANY MEANS WITHOUT INCURRING UNREASONABLE
4 COST AND DELAY.

5 (8) WITHIN 30 DAYS AFTER THE COMMISSIONER OR THE ATTORNEY
6 GENERAL MAKES A WRITTEN REQUEST BY CERTIFIED MAIL FOR DISCLOSURE
7 OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT, THE
8 INSURER THAT PREPARED THE DOCUMENT OR CAUSED THE DOCUMENT TO BE
9 PREPARED MAY FILE WITH THE INGHAM COUNTY CIRCUIT COURT A PETITION
10 REQUESTING AN IN CAMERA HEARING ON WHETHER THE INSURANCE COMPLI-
11 ANCE SELF-EVALUATIVE AUDIT DOCUMENT OR PORTIONS OF THE AUDIT DOC-
12 UMENT ARE SUBJECT TO DISCLOSURE. FAILURE BY THE INSURER TO FILE
13 A PETITION WAIVES THE PRIVILEGE PROVIDED BY THIS SECTION FOR THAT
14 REQUEST. AN INSURER ASSERTING THE INSURANCE COMPLIANCE
15 SELF-EVALUATIVE PRIVILEGE IN RESPONSE TO A REQUEST FOR DISCLOSURE
16 UNDER THIS SUBSECTION SHALL INCLUDE IN ITS REQUEST FOR AN IN
17 CAMERA HEARING ALL OF THE INFORMATION LISTED IN SUBSECTION (10).
18 WITHIN 45 DAYS AFTER THE FILING OF THE PETITION, THE COURT SHALL
19 ISSUE AN ORDER SCHEDULING AN IN CAMERA HEARING TO DETERMINE
20 WHETHER THE INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT
21 OR PORTIONS OF THE AUDIT DOCUMENT ARE PRIVILEGED OR ARE SUBJECT
22 TO DISCLOSURE.

23 (9) IF THE COURT REQUIRES DISCLOSURE UNDER SUBSECTION (7),
24 THE COURT MAY COMPEL THE DISCLOSURE OF ONLY THOSE PORTIONS OF AN
25 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT RELEVANT TO
26 ISSUES IN DISPUTE IN THE UNDERLYING PROCEEDING. INFORMATION
27 REQUIRED TO BE DISCLOSED SHALL NOT BE CONSIDERED A PUBLIC

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

4 (10) AN INSURER ASSERTING THE PRIVILEGE UNDER THIS SECTION
5 IN RESPONSE TO A REQUEST FOR DISCLOSURE SHALL PROVIDE TO THE COM-
6 MISSIONER OR THE ATTORNEY GENERAL, AT THE TIME OF FILING ANY
7 OBJECTION TO THE DISCLOSURE, ALL OF THE FOLLOWING INFORMATION:

8 (A) THE DATE OF THE INSURANCE COMPLIANCE SELF-EVALUATIVE
9 AUDIT DOCUMENT.

10 (B) THE IDENTITY OF THE ENTITY OR INDIVIDUAL CONDUCTING THE
11 AUDIT.

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

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

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

26 (12) THE PARTIES MAY AT ANY TIME STIPULATE IN PROCEEDINGS
27 UNDER THIS SECTION TO ENTRY OF AN ORDER DIRECTING THAT SPECIFIC

1 INFORMATION CONTAINED IN AN INSURANCE COMPLIANCE SELF-EVALUATIVE
2 AUDIT DOCUMENT IS OR IS NOT SUBJECT TO THE PRIVILEGE PROVIDED
3 UNDER SUBSECTIONS (1) AND (2). ANY SUCH STIPULATION MAY BE
4 LIMITED TO THE INSTANT PROCEEDING AND, ABSENT SPECIFIC LANGUAGE
5 TO THE CONTRARY, IS NOT APPLICABLE TO ANY OTHER PROCEEDING.

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

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

12 (B) INFORMATION OBTAINED BY OBSERVATION OR MONITORING BY ANY
13 REGULATORY AGENCY.

14 (C) INFORMATION OBTAINED FROM A SOURCE INDEPENDENT OF THE
15 INSURANCE COMPLIANCE AUDIT.

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

18 (15) AS USED IN THIS SECTION:

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

26 (B) "INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT"
27 MEANS A DOCUMENT PREPARED AS A RESULT OF OR IN CONNECTION WITH AN

1 INSURANCE COMPLIANCE AUDIT. AN INSURANCE COMPLIANCE
2 SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE A WRITTEN RESPONSE TO
3 THE FINDINGS OF AN INSURANCE COMPLIANCE AUDIT. AN INSURANCE COM-
4 PLIANCE SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE, BUT IS NOT
5 LIMITED TO, FIELD NOTES AND RECORDS OF OBSERVATIONS, FINDINGS,
6 OPINIONS, SUGGESTIONS, CONCLUSIONS, DRAFTS, MEMORANDA, DRAWINGS,
7 PHOTOGRAPHS, EXHIBITS, COMPUTER-GENERATED OR ELECTRONICALLY
8 RECORDED INFORMATION, PHONE RECORDS, MAPS, CHARTS, GRAPHS, AND
9 SURVEYS, IF THIS SUPPORTING INFORMATION IS COLLECTED OR DEVELOPED
10 FOR THE PRIMARY PURPOSE AND IN THE COURSE OF AN INSURANCE COMPLI-
11 ANCE AUDIT. AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCU-
12 MENT ALSO INCLUDES, BUT IS NOT LIMITED TO, ANY OF THE FOLLOWING:

13 (i) AN INSURANCE COMPLIANCE AUDIT REPORT PREPARED BY AN
14 AUDITOR, WHO MAY BE AN EMPLOYEE OF THE INSURER OR AN INDEPENDENT
15 CONTRACTOR, WHICH MAY INCLUDE THE SCOPE OF THE AUDIT, THE INFOR-
16 MATION GAINED IN THE AUDIT, AND CONCLUSIONS AND RECOMMENDATIONS,
17 WITH EXHIBITS AND APPENDICES.

18 (ii) MEMORANDA AND DOCUMENTS ANALYZING PORTIONS OR ALL OF
19 THE INSURANCE COMPLIANCE AUDIT REPORT AND DISCUSSING POTENTIAL
20 IMPLEMENTATION ISSUES.

21 (iii) AN IMPLEMENTATION PLAN THAT ADDRESSES CORRECTING PAST
22 NONCOMPLIANCE, IMPROVING CURRENT COMPLIANCE, AND PREVENTING
23 FUTURE NONCOMPLIANCE.

24 (iv) ANALYTIC DATA GENERATED IN THE COURSE OF CONDUCTING THE
25 INSURANCE COMPLIANCE AUDIT.