

# HOUSE BILL No. 5819

May 5, 1998, Introduced by Rep. Profit and referred to the Committee on Insurance.

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 AND CON-  
3 FIDENTIAL INFORMATION, IS NOT SUBJECT TO PUBLIC INSPECTION, AND  
4 IS NOT ADMISSIBLE AS EVIDENCE IN ANY CIVIL, CRIMINAL, OR ADMINIS-  
5 TRATIVE PROCEEDING.

6        (2) EXCEPT AS OTHERWISE PROVIDED, AN INDIVIDUAL INVOLVED IN  
7 PREPARING AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT OR INSUR-  
8 ANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT IS NOT SUBJECT TO  
9 EXAMINATION CONCERNING THAT AUDIT OR AUDIT DOCUMENT IN ANY CIVIL,  
10 CRIMINAL, OR ADMINISTRATIVE PROCEEDING.

1 (3) AN INSURER MAY SUBMIT, IN CONNECTION WITH EXAMINATIONS  
2 CONDUCTED UNDER THIS ACT, AN INSURANCE COMPLIANCE SELF-EVALUATIVE  
3 AUDIT DOCUMENT TO THE COMMISSIONER OR HIS OR HER DESIGNEE AS A  
4 CONFIDENTIAL DOCUMENT UNDER SECTION 222(7) WITHOUT WAIVING THE  
5 PRIVILEGE IN SUBSECTION (1). THIS SUBSECTION DOES NOT GIVE THE  
6 COMMISSIONER AUTHORITY TO COMPEL AN INSURER TO DISCLOSE OR OTHER-  
7 WISE PROVIDE AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT  
8 DOCUMENT.

9 (4) WITHIN 30 DAYS AFTER THE COMMISSIONER OR THE ATTORNEY  
10 GENERAL MAKES A WRITTEN REQUEST BY CERTIFIED MAIL FOR DISCLOSURE  
11 OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT, THE  
12 INSURER THAT PREPARED, OR CAUSED TO BE PREPARED, THE DOCUMENT MAY  
13 FILE WITH THE INGHAM COUNTY CIRCUIT COURT A PETITION REQUESTING  
14 AN IN CAMERA HEARING ON WHETHER THE INSURANCE COMPLIANCE  
15 SELF-EVALUATIVE AUDIT DOCUMENT OR PORTIONS OF THE DOCUMENT ARE  
16 SUBJECT TO DISCLOSURE. FAILURE BY THE INSURER TO FILE A PETITION  
17 WAIVES ANY PRIVILEGE PROVIDED BY THIS SECTION. WITHIN 45 DAYS  
18 AFTER THE FILING OF THE PETITION, THE COURT SHALL ISSUE AN ORDER  
19 SCHEDULING AN IN CAMERA HEARING TO DETERMINE WHETHER THE INSUR-  
20 ANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT OR PORTIONS OF THE  
21 DOCUMENT ARE SUBJECT TO DISCLOSURE.

22 (5) THE PRIVILEGE IN SUBSECTION (1) DOES NOT APPLY AS  
23 FOLLOWS:

24 (A) TO THE EXTENT THAT IT IS EXPRESSLY WAIVED BY THE INSURER  
25 THAT PREPARED OR CAUSED TO BE PREPARED THE INSURANCE COMPLIANCE  
26 SELF-EVALUATIVE AUDIT DOCUMENT.

1 (B) IF A COURT, AFTER AN IN CAMERA REVIEW, REQUIRES  
2 DISCLOSURE IN A CIVIL OR ADMINISTRATIVE PROCEEDING AFTER  
3 DETERMINING 1 OR MORE OF THE FOLLOWING:

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

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

6 (iii) EVEN IF SUBJECT TO THE PRIVILEGE, THE MATERIAL SHOWS  
7 NONCOMPLIANCE WITH STATE OR FEDERAL LAW, RULE, REGULATION, OR  
8 ORDER AND THE INSURER FAILED TO UNDERTAKE REASONABLE CORRECTIVE  
9 ACTION OR ELIMINATE THE NONCOMPLIANCE WITHIN A REASONABLE TIME.

10 (C) IF A COURT, AFTER AN IN CAMERA REVIEW, REQUIRES DISCLO-  
11 SURE IN A CRIMINAL PROCEEDING AFTER DETERMINING 1 OR MORE OF THE  
12 FOLLOWING:

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

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

15 (iii) EVEN IF SUBJECT TO THE PRIVILEGE, THE MATERIAL SHOWS  
16 NONCOMPLIANCE WITH STATE OR FEDERAL LAW, RULE, REGULATION, OR  
17 ORDER AND THE INSURER FAILED TO UNDERTAKE REASONABLE CORRECTIVE  
18 ACTION OR ELIMINATE THE NONCOMPLIANCE WITHIN A REASONABLE TIME.

19 (iv) THE MATERIAL CONTAINS EVIDENCE RELATING TO THE COMMIS-  
20 SION OF A CRIMINAL OFFENSE UNDER THIS ACT, THE COMMISSIONER OR  
21 THE ATTORNEY GENERAL HAS A COMPELLING NEED FOR THE INFORMATION,  
22 THE INFORMATION IS NOT OTHERWISE AVAILABLE, AND THE COMMISSIONER  
23 OR THE ATTORNEY GENERAL IS UNABLE TO OBTAIN THE SUBSTANTIAL  
24 EQUIVALENT OF THE INFORMATION BY ANY MEANS WITHOUT INCURRING  
25 UNREASONABLE COST AND DELAY.

26 (6) IF THE COURT DETERMINES THAT SUBSECTION (5)(B)(i), (ii),  
27 OR (iii) OR (C)(i), (ii), (iii), OR (iv) APPLIES, THE COURT MAY

1 COMPEL THE DISCLOSURE OF ONLY THOSE PORTIONS OF AN INSURANCE  
2 COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT RELEVANT TO ISSUES IN  
3 DISPUTE IN THE UNDERLYING PROCEEDING. INFORMATION REQUIRED TO BE  
4 DISCLOSED SHALL NOT BE CONSIDERED A PUBLIC DOCUMENT.

5 (7) AN INSURER ASSERTING THE PRIVILEGE UNDER THIS SECTION IN  
6 RESPONSE TO A REQUEST FOR DISCLOSURE SHALL PROVIDE TO THE COMMIS-  
7 SIONER OR THE ATTORNEY GENERAL, AND TO THE COURT AT THE TIME OF  
8 FILING A PETITION UNDER SUBSECTION (4), ALL OF THE FOLLOWING  
9 INFORMATION:

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

12 (B) THE IDENTITY OF THE ENTITY OR INDIVIDUALS 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 (8) 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 HAS THE BURDEN OF PROV-  
23 ING THAT SUBSECTION (5)(B)(i), (ii), OR (iii) OR (C)(i), (ii),  
24 (iii), OR (iv) IS APPLICABLE.

25 (9) THIS SECTION DOES NOT LIMIT, WAIVE, OR ABROGATE THE  
26 SCOPE OR NATURE OF ANY OTHER STATUTORY OR COMMON LAW PRIVILEGE.

1 (10) AS USED IN THIS SECTION:

2 (A) "INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT" MEANS A  
3 VOLUNTARY, INTERNAL EVALUATION, REVIEW, ASSESSMENT, OR AUDIT THAT  
4 IS NOT EXPRESSLY REQUIRED BY STATE OR FEDERAL LAW, RULE, REGULA-  
5 TION, ORDER, OR PROFESSIONAL STANDARD AND THAT IS DESIGNED TO  
6 IDENTIFY AND PREVENT NONCOMPLIANCE OR TO IMPROVE COMPLIANCE WITH  
7 THOSE LAWS, RULES, REGULATIONS, ORDERS, OR PROFESSIONAL  
8 STANDARDS. AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT MAY BE  
9 CONDUCTED BY THE INSURER, ITS EMPLOYEES, OR INDEPENDENT  
10 CONTRACTORS.

11 (B) "INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT"  
12 MEANS A DOCUMENT, COMMUNICATION, DATA, REPORT, OR OTHER INFORMA-  
13 TION PREPARED AS A RESULT OF OR IN CONNECTION WITH AN INSURANCE  
14 COMPLIANCE SELF-EVALUATIVE AUDIT. AN INSURANCE COMPLIANCE  
15 SELF-EVALUATIVE AUDIT DOCUMENT MAY INCLUDE A WRITTEN RESPONSE TO  
16 THE FINDINGS OF AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT.  
17 AN INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT DOCUMENT MAY  
18 INCLUDE, BUT IS NOT LIMITED TO, FIELD NOTES AND RECORDS OF OBSER-  
19 VATIONS, FINDINGS, OPINIONS, SUGGESTIONS, CONCLUSIONS, DRAFTS,  
20 MEMORANDA, DRAWINGS, PHOTOGRAPHS, COMPUTER-GENERATED OR ELECTRON-  
21 ICALLY RECORDED INFORMATION, PHONE RECORDS, MAPS, CHARTS, GRAPHS,  
22 AND SURVEYS, IF THIS SUPPORTING INFORMATION IS COLLECTED OR  
23 DEVELOPED FOR THE PRIMARY PURPOSE AND IN THE COURSE OF AN INSUR-  
24 ANCE COMPLIANCE SELF-EVALUATIVE AUDIT. AN INSURANCE COMPLIANCE  
25 SELF-EVALUATIVE AUDIT DOCUMENT ALSO INCLUDES AN INSURANCE COMPLI-  
26 ANCE SELF-EVALUATIVE AUDIT REPORT PREPARED BY AN AUDITOR, WHO MAY  
27 BE AN EMPLOYEE OF THE INSURER OR AN INDEPENDENT CONTRACTOR, WHICH

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1 REPORT INCLUDES: THE SCOPE OF THE AUDIT; INFORMATION GAINED IN  
2 THE AUDIT; CONCLUSIONS AND RECOMMENDATIONS, WITH EXHIBITS, APPEN-  
3 DICES, MEMORANDA, AND DOCUMENTS ANALYZING PORTIONS OR ALL OF THE  
4 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT REPORT AND DISCUSSING  
5 POTENTIAL IMPLEMENTATION ISSUES; AN IMPLEMENTATION PLAN THAT  
6 ADDRESSES CORRECTING PAST NONCOMPLIANCE, IMPROVING CURRENT COM-  
7 PLIANCE, AND PREVENTING FUTURE NONCOMPLIANCE; AND ANALYTIC DATA  
8 GENERATED IN THE COURSE OF CONDUCTING THE INSURANCE COMPLIANCE  
9 SELF-EVALUATIVE AUDIT. THE FOLLOWING ARE NOT INSURANCE COMPLI-  
10 ANCE SELF-EVALUATIVE AUDIT DOCUMENTS:

11 (i) A DOCUMENT, COMMUNICATION, DATA, REPORT, OR OTHER INFOR-  
12 MATION CREATED AS A RESULT OF A CLAIM INVOLVING PERSONAL INJURY  
13 OR WORKERS' COMPENSATION MADE AGAINST AN INSURANCE POLICY.

14 (ii) DOCUMENTS, COMMUNICATIONS, DATA, REPORTS, OR OTHER  
15 INFORMATION REQUIRED TO BE COLLECTED, DEVELOPED, MAINTAINED,  
16 REPORTED, OR OTHERWISE MADE AVAILABLE TO A REGULATORY AGENCY PUR-  
17 SUANT TO THIS ACT, OR OTHER FEDERAL OR STATE LAW, RULE, REGULA-  
18 TION, ORDER, OR PROFESSIONAL STANDARD.

19 (iii) INFORMATION OBTAINED BY OBSERVATION OR MONITORING BY  
20 ANY REGULATORY AGENCY.

21 (iv) INFORMATION OBTAINED FROM A SOURCE INDEPENDENT OF THE  
22 INSURANCE COMPLIANCE SELF-EVALUATIVE AUDIT.