SUBSTITUTE FOR HOUSE BILL NO. 5426

A bill to amend 2017 PA 132, entitled "Cyber civilian corps act," by amending sections 2, 3, 4, 5, 6, and 7 (MCL 18.222, 18.223, 18.224, 18.225, 18.226, and 18.227). THE PEOPLE OF THE STATE OF MICHIGAN ENACT: Sec. 2. As used in this act: 1 2 (a) "Advisory board" means the Michigan cyber civilian corps advisory board created under section 9. 3 (b) "Chief information officer" means the individual within 4 the department designated by the governor as the chief information 5 6 officer for this state. (c) "Client" means a municipal, educational, nonprofit, or 7 business critical infrastructure organization that has requested 8





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and is using the rapid response assistance of the Michigan cyber
 civilian corps under the direction of the department.

3 (d) "Critical infrastructure" means systems and assets,
4 whether physical or virtual, so vital to the United States or this
5 state that the incapacity or destruction of that system or asset
6 would have a debilitating impact on security, economic security,
7 public health or safety, or any combination of these as determined
8 by the department.

(e) (d) "Cybersecurity incident" means an event occurring on 9 10 or conducted through a computer network that actually or imminently 11 jeopardizes the integrity, confidentiality, or availability of computers, information or communications systems or networks, 12 physical or virtual infrastructure controlled by computers or 13 14 information systems, or information resident on any of these. 15 Cybersecurity incident includes, but is not limited to, the existence of a vulnerability in an information system, system 16 security procedures, internal controls, or implementation that is 17 18 subject to exploitation.

19 (f) (e)—"Department" means the department of technology, 20 management, and budget.

(g) "Michigan cyber civilian corps advisor" or "advisor" means an individual who has entered into a volunteer agreement with the department to serve as a nondeployable advisor in the Michigan cyber civilian corps.

(h) (f) "Michigan cyber civilian corps" means the program established by this act under which civilian volunteers who have expertise in addressing cybersecurity incidents may volunteer at the invitation of the department to provide rapid response assistance to a municipal, educational, nonprofit, or business



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critical infrastructure organization in need of expert assistance
 during a cybersecurity incident.

3 (i) (g) "Michigan cyber civilian corps volunteer" means an
4 individual who has entered into a volunteer agreement with the
5 department to serve as a deployable volunteer in the Michigan cyber
6 civilian corps.

7 (j) (h) "Volunteer agreement" means the contract entered into
8 between the department and a Michigan cyber civilian corps
9 volunteer or advisor under section 4.

Sec. 3. The department may appoint individuals to serve as Michigan cyber civilian corps volunteers and Michigan cyber civilian corps advisors for the purposes of facilitating the responsibilities of the department as provided in this act.

Sec. 4. The department shall enter into a contract with any individual who wishes to accept an invitation by the department to serve as a Michigan cyber civilian corps volunteer or Michigan cyber civilian corps advisor and meets the qualifying criteria for those positions as determined by the advisory board. The contract must include, at a minimum, all of the following:

20 (a) A provision acknowledging the confidentiality of21 information relating to this state, state residents, and clients.

(b) A provision protecting from disclosure any confidential
information of this state, state residents, or clients acquired by
the Michigan cyber civilian corps volunteer or advisor through
participation in the Michigan cyber civilian corps.

26 (c) A provision requiring the Michigan cyber civilian corps
27 volunteer to avoid conflicts of interest that might arise from a
28 particular deployment.

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(d) A provision requiring the Michigan cyber civilian corps



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volunteer or advisor to comply with all existing department
 security policies and procedures regarding information technology
 resources.

4 (e) A provision requiring the Michigan cyber civilian corps
5 volunteer or advisor to consent to background screening considered
6 appropriate by the department under this act, and a section in
7 which the individual gives that consent as described in section 5.

8 (f) A provision requiring the Michigan cyber civilian corps
9 volunteer or advisor to attest that he or she meets any standards
10 of expertise that may be established by the department.

Sec. 5. (1) When an individual accepts an invitation to serve as a Michigan cyber civilian corps volunteer or advisor as described in section 4, the department shall request the department of state police to do both of the following:

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(a) Conduct a criminal history check on the individual.

16 (b) Conduct a criminal records check through the Federal17 Bureau of Investigation on the individual.

(2) An individual who accepts an invitation to the Michigan
cyber civilian corps shall give written consent in the volunteer
agreement for the department of state police to conduct the
criminal history check and criminal records check required under
this section. The department shall require the individual to submit
his or her fingerprints to the department of state police and the
Federal Bureau of Investigation for the criminal records check.

(3) The department shall request a criminal history check and
criminal records check under this section on all individuals who
wish to participate as Michigan cyber civilian corps volunteers or
advisors. The department shall make the request on a form and in
the manner prescribed by the department of state police.



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(4) Within a reasonable time after receiving a complete
 request by the department for a criminal history check and criminal
 records check on an individual under this section, the department
 of state police shall conduct the criminal history check and
 provide a report of the results to the department. The report must
 indicate that the individual is cleared or not cleared to become a
 Michigan cyber civilian corps volunteer or advisor.

8 (5) Within a reasonable time after receiving a proper request 9 by the department for a criminal records check on an individual 10 under this section, the department of state police shall initiate 11 the criminal records check with the Federal Bureau of 12 Investigation. After receiving the results of the criminal records 13 check from the Federal Bureau of Investigation, the department of 14 state police shall provide a report to the department that 15 indicates that the individual is cleared or not cleared to become a 16 Michigan cyber civilian corps volunteer or advisor.

17 (6) If a criminal arrest fingerprint is subsequently submitted 18 to the department of state police and matches against a fingerprint 19 that was submitted pursuant to this act and stored in its automated 20 fingerprint identification system (AFIS) database, the department of state police shall notify the department that the individual is 21 still cleared or is no longer cleared to continue as a Michigan 22 23 cyber civilian corps volunteer. When the department of state police 24 is able to participate with the Federal Bureau of Investigation 25 automatic notification system, then any subsequent arrest fingerprint submitted to the Federal Bureau of Investigation must 26 27 also be reviewed by the department of state police. The department 28 of state police shall provide a report to the department that 29 indicates that the individual is still cleared or is no longer



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cleared to continue as a Michigan cyber civilian corps volunteer or
 advisor.

3 (7) If a background check results in previous criminal
4 history, the individual may appeal to the director or his or her
5 designee for nondeployable Michigan cyber civilian corps advisor
6 status.

7 (8) Michigan cyber civilian corps volunteers or advisors may
8 not engage in training until either the background check or appeal
9 regarding the background check process has been completed.

Sec. 6. (1) A Michigan cyber civilian corps volunteer or advisor is not an agent, employee, or independent contractor of this state for any purpose and has no authority to bind this state with regard to third parties.

14 (2) This state is not liable to a Michigan cyber civilian
15 corps volunteer or advisor for personal injury or property damage
16 suffered by the Michigan cyber civilian corps volunteer through
17 participation in the Michigan cyber civilian corps.

18 Sec. 7. (1) Except as otherwise provided in this section, the 19 department and this state are immune from tort liability for acts 20 or omissions by a Michigan cyber civilian corps volunteer or 21 advisor under this act.

(2) Except as otherwise provided in this section, and without
regard to discretionary or ministerial nature of the conduct of a
Michigan cyber civilian corps volunteer or advisor, each Michigan
cyber civilian corps volunteer or advisor is immune from tort
liability for an injury to a person or damage to property that
occurred while deployed and acting on behalf of the department if
all of the following are met:

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(a) The Michigan cyber civilian corps volunteer or advisor is



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acting or reasonably believes that he or she is acting within the
 scope of his or her authority.

3 (b) The Michigan cyber civilian corps volunteer's or advisor's
4 conduct does not amount to gross negligence that is the proximate
5 cause of the injury or damage.

6 (c) The Michigan cyber civilian corps volunteer's or advisor's
7 conduct is not a material breach of the volunteer agreement during
8 that deployment.

9 (3) If a claim is made or a civil action is commenced against 10 a Michigan cyber civilian corps volunteer **or advisor** for injuries 11 to persons or property caused by negligence of a Michigan cyber 12 civilian corps volunteer or advisor that occurred while in the course of his or her deployment on behalf of the department and 13 14 while acting within the scope of his or her authority, the 15 department may pay for, engage, or furnish the services of an 16 attorney to advise the Michigan cyber civilian corps volunteer or 17 advisor as to the claim and to appear for and represent the 18 Michigan cyber civilian corps volunteer or advisor in the action. 19 The department may compromise, settle, and pay the claim before or 20 after the commencement of a civil action. Whenever a judgment for damages is awarded against a Michigan cyber civilian corps 21 volunteer **or advisor** as a result of a civil action for personal 22 23 injuries or property damage caused by the Michigan cyber civilian 24 corps volunteer or advisor while in the course of his or her 25 deployment and while acting within the scope of his or her authority, the department may indemnify the Michigan cyber civilian 26 27 corps volunteer or advisor or pay, settle, or compromise the 28 judgment.

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(4) If a criminal action is commenced against a Michigan cyber



civilian corps volunteer or advisor based upon the conduct of the 1 Michigan cyber civilian corps volunteer or advisor in the course of 2 his or her deployment, if the Michigan cyber civilian corps 3 volunteer or advisor had a reasonable basis for believing that he 4 or she was acting within the scope of his or her authority at the 5 6 time of the alleged conduct, the department may pay for, engage, or 7 furnish the services of an attorney to advise the Michigan cyber 8 civilian corps volunteer or advisor as to the action, and to appear 9 for and represent the Michigan cyber civilian corps volunteer or 10 advisor in the action. A Michigan cyber civilian corps volunteer or 11 advisor who has incurred legal expenses for conduct prescribed in this subsection may obtain reimbursement for those expenses under 12 13 this subsection.

14 (5) This section does not impose liability on this state or 15 the department.

16 (6) As used in this section, "gross negligence" means conduct
17 so reckless as to demonstrate a substantial lack of concern for
18 whether an injury results.

19 Enacting section 1. This amendatory act does not take effect 20 unless House Bill No. 5427 of the 100th Legislature is enacted into 21 law.



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