

# SENATE BILL No. 1444

September 24, 2002, Introduced by Senator PETERS and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 134, 221, 1246, and 5903 (MCL 500.134, 500.221, 500.1246, and 500.5903), section 134 as amended by 1990 PA 256, section 221 as added by 2001 PA 275, section 1246 as added by 2001 PA 228, and section 5903 as added by 1995 PA 215, and by adding section 252.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 134. (1) Every certificate of authority or license in  
2 force immediately prior to January 1, 1957 and existing under any  
3 act repealed by this act is valid until its original expiration  
4 date, unless earlier terminated in accordance with this act.

5       (2) Any plan of operation adopted by an association or  
6 facility, and any premium or assessment levied against an insurer  
7 member of that association or facility, is hereby validated

1 retroactively to the date of its original adoption or levy and  
2 shall continue in force and effect according to the terms of the  
3 plan of operation, premium, or assessment until otherwise changed  
4 by the commissioner or the board of directors of the association  
5 or facility pursuant to this act.

6 (3) An association or facility or the board of directors of  
7 the association or facility is not a state agency and the money  
8 of an association or facility is not state money.

9 ~~(4) A record of an association or facility shall be~~  
10 ~~exempted from disclosure pursuant to section 13 of the freedom of~~  
11 ~~information act, Act No. 442 of the Public Acts of 1976, being~~  
12 ~~section 15.243 of the Michigan Compiled Laws.~~

13 (4) ~~(5)~~ Any premium or assessment levied by an association  
14 or facility, or any premium or assessment of a similar associa-  
15 tion or facility formed under a law in force outside this state,  
16 is not a burden or special burden for purposes of a calculation  
17 under section 476a, and any premium or assessment paid to an  
18 association or facility shall not be included in determining the  
19 aggregate amount a foreign insurer pays to the commissioner under  
20 section 476a.

21 (5) ~~(6)~~ As used in this section, "association or facility"  
22 means an association of insurers created under this act and any  
23 other association or facility formed under this act as a non-  
24 profit organization of insurer members, including, but not  
25 limited to, the following:

26 (a) The Michigan worker's compensation placement facility  
27 created under chapter 23.

1 (b) The Michigan basic property insurance association  
2 created under ~~section~~ CHAPTER 29.

3 (c) The catastrophic claims association created under  
4 chapter 31.

5 (d) The Michigan automobile insurance placement facility  
6 created under chapter 33.

7 (e) The Michigan life and health insurance guaranty associa-  
8 tion created under chapter 77.

9 (f) The property and casualty guaranty association created  
10 under chapter 79.

11 (g) The assigned claims facility created under section  
12 3171.

13 Sec. 221. (1) Except as otherwise provided in this section,  
14 an insurance compliance self-evaluative audit document is privi-  
15 leged information and is not discoverable or admissible as evi-  
16 dence in any civil, criminal, or administrative proceeding.

17 (2) Except as otherwise provided in this section, a person  
18 involved in preparing an insurance compliance self-evaluative  
19 audit or insurance compliance self-evaluative audit document is  
20 not subject to examination concerning that audit or audit docu-  
21 ment in any civil, criminal, or administrative proceeding.  
22 However, if the insurance compliance self-evaluative audit,  
23 insurance compliance self-evaluative audit document, or any por-  
24 tion of the audit or audit document is not privileged, the indi-  
25 vidual involved in the preparation of the audit or audit document  
26 may be examined concerning the portion of the audit or audit  
27 document that is not privileged. A person involved in preparing

1 an insurance compliance self-evaluative audit or insurance  
2 compliance self-evaluative audit document who becomes aware of  
3 any alleged criminal violation of this act shall report that act  
4 to the insurer. Within 30 days after receiving the report, the  
5 insurer shall provide the information to the commissioner.

6 (3) An insurance compliance self-evaluative audit document  
7 furnished to the commissioner voluntarily or as a result of a  
8 request of the commissioner under a claim of authority to compel  
9 disclosure under subsection (7) shall not be provided by the com-  
10 missioner to any other person and shall be accorded the same con-  
11 fidentiality and other protections as provided in section 222(7)  
12 without waiving the privileges in subsections (1) and (2). Any  
13 use of an insurance compliance self-evaluative audit document  
14 furnished voluntarily or as a result of a request of the commis-  
15 sioner under a claim of authority to compel disclosure under  
16 subsection (7) is limited to determining whether or not any dis-  
17 closed defects in an insurer's policies and procedures or inap-  
18 propriate treatment of customers has been remedied or that an  
19 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~~

~~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.

1           (8) Within 14 days after the commissioner or the attorney  
2 general makes a written request by certified mail for disclosure  
3 of an insurance compliance self-evaluative audit document, the  
4 insurer that prepared the document or caused the document to be  
5 prepared may file with the Ingham county circuit court a petition  
6 requesting an in camera hearing on whether the insurance compli-  
7 ance self-evaluative audit document or portions of the audit doc-  
8 ument are subject to disclosure. Failure by the insurer to file  
9 a petition waives the privilege provided by this section for that  
10 request. An insurer asserting the insurance compliance  
11 self-evaluative privilege in response to a request for disclosure  
12 under this subsection shall include in its request for an in  
13 camera hearing all of the information listed in subsection (10).  
14 Within 30 days after the filing of the petition, the court shall  
15 issue an order scheduling an in camera hearing to determine  
16 whether the insurance compliance self-evaluative audit document  
17 or portions of the audit document are privileged or are subject  
18 to disclosure.

19           (9) If the court requires disclosure under subsections (7)  
20 and (8), the court may compel the disclosure of only those por-  
21 tions of an insurance compliance self-evaluative audit document  
22 relevant to issues in dispute in the underlying proceeding.  
23 Information required to be disclosed shall not be considered a  
24 public document and shall not be considered to be a waiver of the  
25 privilege for any other civil, criminal, or administrative  
26 proceeding.

1 (10) An insurer asserting the privilege under this section  
2 in response to a request for disclosure under subsection (8)  
3 shall provide to the commissioner or the attorney general, at the  
4 time of filing ~~any~~ AN objection to the disclosure, all of the  
5 following information:

6 (a) The date of the insurance compliance self-evaluative  
7 audit document.

8 (b) The identity of the entity or individual conducting the  
9 audit.

10 (c) The general nature of the activities covered by the  
11 insurance compliance self-evaluative audit.

12 (d) An identification of the portions of the insurance com-  
13 pliance self-evaluative audit document for which the privilege is  
14 being asserted.

15 (11) An insurer asserting the privilege under this section  
16 has the burden of demonstrating the applicability of the  
17 privilege. Once an insurer has established the applicability of  
18 the privilege, a party seeking disclosure under  
19 subsection (7)(a)(i) has the burden of proving that the privilege  
20 is asserted for a fraudulent purpose. The commissioner or attor-  
21 ney general seeking disclosure under subsection (7)(b)(iii) has  
22 the burden of proving the elements listed in  
23 subsection (7)(b)(iii).

24 (12) The parties may at any time stipulate in proceedings  
25 under this section to entry of an order directing that specific  
26 information contained in an insurance compliance self-evaluative  
27 audit document is or is not subject to the privileges provided

1 under subsections (1) and (2). Any such stipulation may be  
2 limited to the instant proceeding and, absent specific language  
3 to the contrary, is not applicable to any other proceeding.

4 (13) The privileges provided under subsections (1) and (2)  
5 do not extend to any of the following:

6 (a) Documents, communications, data, reports, or other  
7 information expressly required to be collected, developed, main-  
8 tained, or reported to a regulatory agency under this act or  
9 other federal or state law.

10 (b) Information obtained by observation or monitoring by any  
11 regulatory agency.

12 (c) Information obtained from a source independent of the  
13 insurance compliance audit.

14 (d) Documents, communication, data, reports, memoranda,  
15 drawings, photographs, exhibits, computer records, maps, charts,  
16 graphs, and surveys kept or prepared in the ordinary course of  
17 business.

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~~ THAT involves an  
27 activity regulated under this act.



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 prepared  
12 in the course of an insurance compliance audit or attached as an  
13 exhibit to the audit. An insurance compliance self-evaluative  
14 audit document also includes, but is not limited to, any of the  
15 following:

16 (i) An insurance compliance audit report prepared by an  
17 auditor, who may be an employee of the insurer or an independent  
18 contractor, ~~which~~ THAT may include the scope of the audit, the  
19 information gained in the audit, and conclusions and recommenda-  
20 tions, with exhibits and appendices.

21 (ii) Memoranda and documents analyzing portions or all of  
22 the insurance compliance audit report and discussing potential  
23 implementation issues.

24 (iii) An implementation plan that addresses correcting past  
25 noncompliance, improving current compliance, and preventing  
26 future noncompliance.

1 (iv) Analytic data generated in the course of conducting the  
2 insurance compliance audit.

3 SEC. 252. ALL INFORMATION SUBMITTED TO THE COMMISSIONER  
4 UNDER THIS ACT IS SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF  
5 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

6 Sec. 1246. (1) Any documents, materials, or other informa-  
7 tion in the control or possession of the office of financial and  
8 insurance services that is furnished by an insurer, an insurance  
9 producer, or an employee or representative acting on behalf of  
10 the insurer or insurance producer, or obtained by the commis-  
11 sioner in an investigation pursuant to this section is confiden-  
12 tial by law and privileged, ~~is not subject to the freedom of~~  
13 ~~information act, 1976 PA 442, MCL 15.231 to 15.246,~~ is not  
14 subject to subpoena, and is not subject to discovery or admissi-  
15 ble in evidence in any private civil action. However, the com-  
16 missioner is authorized to use the documents, materials, or other  
17 information in the furtherance of any regulatory or legal action  
18 brought as a part of the commissioner's duties.

19 (2) Neither the commissioner nor any person who received  
20 documents, materials, or other information while acting under the  
21 commissioner's authority is permitted or required to testify in  
22 any private civil action concerning any confidential documents,  
23 materials, or information under subsection (1).

24 (3) In order to assist in the performance of the  
25 commissioner's duties under this chapter, the commissioner may do  
26 any of the following:

1 (a) Share documents, materials, or other information,  
2 including the confidential and privileged documents, materials,  
3 or information subject to subsection (1), with other state, fed-  
4 eral, and international regulatory agencies, with the national  
5 association of insurance commissioners, its affiliates or subsid-  
6 iaries, and with state, federal, and international law enforce-  
7 ment authorities, provided that the recipient agrees to maintain  
8 the confidentiality and privileged status of the document, mate-  
9 rial, or other information.

10 (b) Receive documents, materials, or information, including  
11 otherwise confidential and privileged documents, materials, or  
12 information, from the national association of insurance commis-  
13 sioners, its affiliates or subsidiaries, and from regulatory and  
14 law enforcement officials of other foreign or domestic jurisdic-  
15 tions, and shall maintain as confidential or privileged any docu-  
16 ment, material, or information received with notice or the under-  
17 standing that it is confidential or privileged under the laws of  
18 the jurisdiction that is the source of the document, material, or  
19 information.

20 (c) Enter into agreements governing sharing and use of  
21 information consistent with this subsection.

22 (4) No waiver of any applicable privilege or claim of confi-  
23 dentiality in the documents, materials, or information shall  
24 occur as a result of disclosure to the commissioner under section  
25 1208b or this section, or as a result of sharing as authorized  
26 under subsection (3).

1 (5) This chapter does not prohibit the commissioner from  
2 releasing final, adjudicated actions including for cause  
3 terminations that are open to public inspection pursuant to the  
4 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, to  
5 a database or other clearinghouse service maintained by the  
6 national association of insurance commissioners or its affiliates  
7 or subsidiaries.

8 (6) An insurer, the authorized representative of the insur-  
9 er, or an insurance producer that fails to report as required  
10 under section 1208b or this section or that is found to have  
11 reported with actual malice by a court of competent jurisdiction  
12 may, after notice and hearing, have its license or certificate of  
13 authority suspended or revoked and may be fined under section  
14 1244.

15 Sec. 5903. (1) A mutual company seeking to convert to a  
16 stock company shall adopt, by the affirmative vote of not less  
17 than 2/3 of its board of directors, a plan of conversion consis-  
18 tent with the requirements of sections 5905 to 5915. At any time  
19 before approval of a plan by the commissioner, the mutual com-  
20 pany, by the affirmative vote of not less than 2/3 of its board  
21 of directors, may amend or withdraw the plan.

22 (2) Before a mutual company's eligible members may vote on  
23 approval of a plan, a mutual company whose board of directors has  
24 adopted a plan shall submit all of the following documents to the  
25 commissioner:

26 (a) The plan of conversion, including the independent  
27 evaluation of pro forma market value required by section 5905.

1 (b) The form of notice required by subsection (5).

2 (c) Any proxies to be solicited from eligible members pursu-  
3 ant to subsection (6).

4 (d) The form of notice required by section 5919(1) to per-  
5 sons whose policies are issued after adoption of the plan but  
6 before its effective date.

7 (e) The proposed articles of incorporation and bylaws of the  
8 converted stock company.

9 (f) A business plan for the converted company that describes  
10 anticipated changes in the postconversion business of the com-  
11 pany, if any, and the company's plan to deploy capital acquired  
12 in the conversion.

13 (3) The commissioner shall approve or disapprove the plan by  
14 not later than 90 days after the filing of the documents under  
15 subsection (2). The commissioner shall approve the plan if he or  
16 she finds all of the following:

17 (a) The plan complies with this chapter.

18 (b) The plan will not prejudice the interests of the  
19 members.

20 (c) The plan's method of allocating subscription rights is  
21 fair and equitable.

22 (d) A substantial reason for and effect of the plan is to  
23 benefit the members of the company or additional capital is  
24 needed to implement the business plan filed pursuant to  
25 subsection (2)(f).

26 (4) The commissioner may retain, at the mutual company's  
27 expense, any qualified expert not otherwise a part of the

1 commissioner's staff to assist in reviewing the plan and the  
2 independent evaluation of the pro forma market value required  
3 under section 5905.

4 (5) All eligible members shall be given notice of the  
5 members' meeting to vote upon the plan. The notice shall briefly  
6 but fairly describe the proposed conversion plan, shall inform  
7 the member of his or her right to vote upon the plan, and shall  
8 be mailed to each member's last known address, as shown on the  
9 mutual company's records, at least 21 days before the time fixed  
10 for the meeting. If the meeting to vote upon the plan is held  
11 during the mutual company's annual meeting of policyholders, only  
12 1 combined notice of meeting is required.

13 (6) The plan shall be adopted upon receiving the affirmative  
14 vote of at least 2/3 of the votes cast by eligible members.  
15 Members entitled to vote ~~upon~~ ON the proposed plan may vote in  
16 person or by proxy. Any proxies to be solicited from eligible  
17 members shall be filed with and approved by the commissioner.  
18 The number of votes each eligible member may cast shall be deter-  
19 mined by the mutual company's bylaws. If the bylaws are silent,  
20 each eligible member may cast 1 vote.

21 (7) The revised articles shall be considered at the meeting  
22 of the policyholders called for the purpose of adopting the plan  
23 of conversion and shall require for adoption the affirmative vote  
24 of at least 2/3 of the votes cast by eligible members.

25 (8) After the eligible members have approved the plan, the  
26 converted stock company shall file both of the following  
27 documents with the commissioner:

1 (a) Unless the commissioner has issued a waiver pursuant to  
2 section 5927(2), the minutes of the meeting of the members at  
3 which the plan was voted upon.

4 (b) The revised articles of incorporation and bylaws of the  
5 converted stock company.

6 (9) Upon the company's request, a business plan filed pursu-  
7 ant to subsection (2)(f) may be granted confidential treatment by  
8 the commissioner. ~~A business plan granted confidential treat-~~  
9 ~~ment is not subject to disclosure by the commissioner under the~~  
10 ~~freedom of information act, Act No. 442 of the Public Acts of~~  
11 ~~1976, being sections 15.231 to 15.246 of the Michigan Compiled~~  
12 ~~Laws.~~