

SUBSTITUTE FOR
HOUSE BILL NO. 6520

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding chapter 17A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER 17A

CORPORATE GOVERNANCE ANNUAL DISCLOSURE

SEC. 1751. THIS CHAPTER DOES NOT PRESCRIBE OR IMPOSE CORPORATE GOVERNANCE STANDARDS AND INTERNAL PROCEDURES BEYOND THAT WHICH IS REQUIRED UNDER APPLICABLE STATE CORPORATE LAW. HOWEVER, THIS CHAPTER DOES NOT LIMIT THE DIRECTOR'S AUTHORITY, OR THE RIGHTS OR OBLIGATIONS OF THIRD PARTIES, UNDER CHAPTER 2.

SEC. 1753. THIS CHAPTER APPLIES TO ALL INSURERS DOMICILED IN THIS STATE.

SEC. 1755. AS USED IN THIS CHAPTER:

1 (A) "CORPORATE GOVERNANCE ANNUAL DISCLOSURE" OR "CGAD" MEANS A
2 CONFIDENTIAL REPORT FILED BY THE INSURER OR INSURANCE GROUP MADE IN
3 ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER.

4 (B) "INSURANCE GROUP" MEANS INSURERS AND AFFILIATES INCLUDED
5 WITHIN AN INSURANCE HOLDING COMPANY SYSTEM.

6 (C) "INSURER" MEANS THAT TERM AS DEFINED IN SECTION 1701.

7 (D) "NAIC" MEANS THAT TERM AS DEFINED IN SECTION 1701.

8 (E) "ORSA SUMMARY REPORT" MEANS THAT TERM AS DEFINED IN
9 SECTION 1701.

10 SEC. 1757. (1) AN INSURER, OR THE INSURANCE GROUP OF WHICH THE
11 INSURER IS A MEMBER, SHALL, NO LATER THAN JUNE 1 OF EACH CALENDAR
12 YEAR, SUBMIT TO THE DIRECTOR A CORPORATE GOVERNANCE ANNUAL
13 DISCLOSURE AS PRESCRIBED BY THE DIRECTOR. NOTWITHSTANDING ANY
14 REQUEST FROM THE DIRECTOR MADE UNDER SUBSECTION (3), IF THE INSURER
15 IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE
16 REPORT REQUIRED BY THIS SECTION TO THE COMMISSIONER OF THE LEAD
17 STATE FOR THE INSURANCE GROUP, IN ACCORDANCE WITH THE LAWS AND
18 REQUIREMENTS OF THE LEAD STATE.

19 (2) THE CGAD REQUIRED UNDER SUBSECTION (1) MUST INCLUDE A
20 SIGNATURE OF THE INSURER OR INSURANCE GROUP'S CHIEF EXECUTIVE
21 OFFICER OR CORPORATE SECRETARY ATTESTING TO THE BEST OF THAT
22 INDIVIDUAL'S BELIEF AND KNOWLEDGE THAT THE INSURER HAS IMPLEMENTED
23 THE CORPORATE GOVERNANCE PRACTICES AND THAT A COPY OF THE
24 DISCLOSURE HAS BEEN PROVIDED TO THE INSURER'S BOARD OF DIRECTORS OR
25 THE APPROPRIATE COMMITTEE OF THE INSURER'S BOARD OF DIRECTORS.

26 (3) AN INSURER NOT REQUIRED TO SUBMIT A CGAD UNDER THIS
27 SECTION SHALL SUBMIT A CGAD ON THE DIRECTOR'S REQUEST.

1 (4) FOR PURPOSES OF COMPLETING THE CGAD, THE INSURER OR
2 INSURANCE GROUP MAY PROVIDE INFORMATION REGARDING CORPORATE
3 GOVERNANCE AT THE ULTIMATE CONTROLLING PARENT LEVEL, AN
4 INTERMEDIATE HOLDING COMPANY LEVEL, OR THE INDIVIDUAL LEGAL ENTITY
5 LEVEL, OR ANY 1 OR MORE OF THOSE LEVELS, DEPENDING ON HOW THE
6 INSURER OR INSURANCE GROUP HAS STRUCTURED ITS SYSTEM OF CORPORATE
7 GOVERNANCE. THE INSURER OR INSURANCE GROUP IS ENCOURAGED TO MAKE
8 THE CGAD DISCLOSURES AT THE LEVEL AT WHICH THE INSURER'S OR
9 INSURANCE GROUP'S RISK APPETITE IS DETERMINED, OR AT WHICH THE
10 EARNINGS, CAPITAL, LIQUIDITY, OPERATIONS, AND REPUTATION OF THE
11 INSURER ARE OVERSEEN COLLECTIVELY AND AT WHICH THE SUPERVISION OF
12 THOSE FACTORS IS COORDINATED AND EXERCISED, OR THE LEVEL AT WHICH
13 LEGAL LIABILITY FOR FAILURE OF GENERAL CORPORATE GOVERNANCE DUTIES
14 WOULD BE PLACED. IF THE INSURER OR INSURANCE GROUP DETERMINES THE
15 LEVEL OF REPORTING BASED ON THE CRITERIA DESCRIBED IN THIS
16 SUBSECTION, THE INSURER OR INSURANCE GROUP SHALL INDICATE WHICH OF
17 THE 3 CRITERIA WAS USED TO DETERMINE THE LEVEL OF REPORTING AND
18 EXPLAIN ANY SUBSEQUENT CHANGES IN LEVEL OF REPORTING.

19 (5) THE REVIEW OF THE CGAD AND ANY ADDITIONAL REQUESTS FOR
20 INFORMATION MUST BE MADE THROUGH THE LEAD STATE IN ACCORDANCE WITH
21 THE LAWS AND REQUIREMENTS OF THE LEAD STATE.

22 (6) AN INSURER THAT PROVIDES INFORMATION SUBSTANTIALLY SIMILAR
23 TO THE INFORMATION REQUIRED BY THIS CHAPTER IN OTHER DOCUMENTS
24 PROVIDED TO THE DIRECTOR, INCLUDING PROXY STATEMENTS FILED IN
25 CONJUNCTION WITH FORM B REQUIREMENTS, OR OTHER STATE OR FEDERAL
26 FILINGS PROVIDED TO THE DEPARTMENT IS NOT REQUIRED TO DUPLICATE
27 THAT INFORMATION IN THE CGAD AND IS ONLY REQUIRED TO CROSS-

1 REFERENCE THE DOCUMENT IN WHICH THE INFORMATION IS INCLUDED.

2 SEC. 1759. (1) THE INSURER OR INSURANCE GROUP HAS DISCRETION
3 OVER THE RESPONSES TO THE CGAD INQUIRIES IF THE CGAD CONTAINS THE
4 MATERIAL INFORMATION NECESSARY TO PERMIT THE DIRECTOR TO GAIN AN
5 UNDERSTANDING OF THE INSURER'S OR GROUP'S CORPORATE GOVERNANCE
6 STRUCTURE, POLICIES, AND PRACTICES. THE DIRECTOR MAY REQUEST
7 ADDITIONAL INFORMATION THAT HE OR SHE CONSIDERS MATERIAL AND
8 NECESSARY TO PROVIDE THE DIRECTOR WITH A CLEAR UNDERSTANDING OF THE
9 CORPORATE GOVERNANCE POLICIES, THE REPORTING OR INFORMATION SYSTEM,
10 OR THE CONTROLS IMPLEMENTING THOSE POLICIES.

11 (2) NOTWITHSTANDING SUBSECTION (1), THE CGAD MUST BE PREPARED
12 AS PRESCRIBED BY THE DIRECTOR. DOCUMENTATION AND SUPPORTING
13 INFORMATION RELATED TO THE CGAD MUST BE MAINTAINED AND MADE
14 AVAILABLE ON EXAMINATION OR ON REQUEST OF THE DIRECTOR.

15 SEC. 1761. (1) DOCUMENTS, MATERIALS, OR OTHER INFORMATION,
16 INCLUDING THE CGAD, IN THE POSSESSION OR CONTROL OF THE DIRECTOR
17 THAT ARE OBTAINED BY, CREATED BY, OR DISCLOSED TO THE DIRECTOR OR
18 ANY OTHER PERSON UNDER THIS CHAPTER ARE CONSIDERED PROPRIETARY AND
19 TO CONTAIN TRADE SECRETS. THE DOCUMENTS, MATERIALS, OR OTHER
20 INFORMATION ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO
21 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
22 15.231 TO 15.246, ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT
23 TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.
24 HOWEVER, THE DIRECTOR MAY USE THE DOCUMENTS, MATERIALS, OR OTHER
25 INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION
26 BROUGHT AS A PART OF THE DIRECTOR'S OFFICIAL DUTIES. THE DIRECTOR
27 SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS, OR OTHER

1 INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE
2 INSURER. THIS SECTION DOES NOT REQUIRE WRITTEN CONSENT OF THE
3 INSURER BEFORE THE DIRECTOR MAY SHARE OR RECEIVE CONFIDENTIAL
4 DOCUMENTS, MATERIALS, OR OTHER CGAD-RELATED INFORMATION UNDER
5 SUBSECTION (3) TO ASSIST IN THE PERFORMANCE OF THE DIRECTOR'S
6 REGULAR DUTIES.

7 (2) THE DIRECTOR OR ANY PERSON WHO RECEIVED DOCUMENTS,
8 MATERIALS, OR OTHER CGAD-RELATED INFORMATION, THROUGH EXAMINATION
9 OR OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE DIRECTOR, OR
10 WITH WHOM THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION ARE SHARED
11 UNDER THIS ACT SHALL NOT TESTIFY IN ANY PRIVATE CIVIL ACTION
12 CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION
13 SUBJECT TO SUBSECTION (1).

14 (3) THE DIRECTOR MAY DO ANY OF THE FOLLOWING:

15 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, ON
16 REQUEST, SHARE DOCUMENTS, MATERIALS, OR OTHER CGAD-RELATED
17 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
18 MATERIALS, OR INFORMATION DESCRIBED IN SUBSECTION (1), INCLUDING
19 PROPRIETARY AND TRADE SECRET DOCUMENTS AND MATERIALS WITH OTHER
20 STATE, FEDERAL, AND INTERNATIONAL FINANCIAL REGULATORY AGENCIES,
21 INCLUDING MEMBERS OF ANY SUPERVISORY COLLEGE UNDER CHAPTER 13, WITH
22 THE NAIC, AND WITH THIRD-PARTY CONSULTANTS RETAINED BY THE DIRECTOR
23 UNDER SECTION 1763. THE DIRECTOR SHALL NOT SHARE DOCUMENTS,
24 MATERIALS, OR OTHER CGAD-RELATED INFORMATION UNLESS THE RECIPIENT
25 AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED
26 STATUS OF THE CGAD-RELATED DOCUMENTS, MATERIALS, OR OTHER
27 INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO

1 MAINTAIN CONFIDENTIALITY.

2 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, RECEIVE
3 DOCUMENTS, MATERIALS, OR OTHER CGAD-RELATED INFORMATION, INCLUDING
4 OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR
5 INFORMATION, INCLUDING PROPRIETARY AND TRADE-SECRET INFORMATION OR
6 DOCUMENTS, FROM REGULATORY OFFICIALS OF OTHER STATE, FEDERAL, AND
7 INTERNATIONAL FINANCIAL REGULATORY AGENCIES, INCLUDING MEMBERS OF
8 ANY SUPERVISORY COLLEGE UNDER CHAPTER 13, AND FROM THE NAIC. THE
9 DIRECTOR SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY
10 DOCUMENTS, MATERIALS, OR INFORMATION RECEIVED WITH NOTICE OR THE
11 UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS
12 OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL,
13 OR INFORMATION.

14 (4) THE SHARING OF INFORMATION AND DOCUMENTS BY THE DIRECTOR
15 UNDER THIS CHAPTER IS NOT A DELEGATION OF REGULATORY AUTHORITY OR
16 RULE-MAKING, AND THE DIRECTOR IS SOLELY RESPONSIBLE FOR THE
17 ADMINISTRATION, EXECUTION, AND ENFORCEMENT OF THIS CHAPTER.

18 (5) THE DISCLOSURE OR SHARING OF DOCUMENTS, PROPRIETARY AND
19 TRADE-SECRET MATERIALS, OR OTHER CGAD-RELATED INFORMATION TO THE
20 DIRECTOR UNDER THIS CHAPTER IS NOT A WAIVER OF AN APPLICABLE
21 PRIVILEGE OR CLAIM OF CONFIDENTIALITY.

22 SEC. 1763. (1) THE DIRECTOR MAY RETAIN, AT THE INSURER'S
23 EXPENSE, THIRD-PARTY CONSULTANTS, INCLUDING ATTORNEYS, ACTUARIES,
24 ACCOUNTANTS, AND OTHER EXPERTS NOT OTHERWISE A PART OF THE
25 DIRECTOR'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE
26 DIRECTOR IN REVIEWING THE CGAD AND RELATED INFORMATION OR THE
27 INSURER'S COMPLIANCE WITH THIS CHAPTER.

1 (2) A PERSON RETAINED UNDER SUBSECTION (1) IS UNDER THE
2 DIRECTION AND CONTROL OF THE DIRECTOR AND SHALL ACT IN A PURELY
3 ADVISORY CAPACITY.

4 (3) THE NAIC AND THIRD-PARTY CONSULTANTS ARE SUBJECT TO THE
5 SAME CONFIDENTIALITY STANDARDS AND REQUIREMENTS AS THE DIRECTOR.

6 (4) AS PART OF THE RETENTION PROCESS, A THIRD-PARTY CONSULTANT
7 SHALL VERIFY TO THE DIRECTOR, WITH NOTICE TO THE INSURER, THAT IT
8 IS FREE OF A CONFLICT OF INTEREST AND THAT IT HAS INTERNAL
9 PROCEDURES IN PLACE TO MONITOR COMPLIANCE WITH A CONFLICT AND TO
10 COMPLY WITH THE CONFIDENTIALITY STANDARDS AND REQUIREMENTS OF THIS
11 CHAPTER.

12 (5) A WRITTEN AGREEMENT WITH THE NAIC OR A THIRD-PARTY
13 CONSULTANT, OR BOTH, UNDER SUBSECTION (4) GOVERNING SHARING AND USE
14 OF INFORMATION PROVIDED UNDER THIS CHAPTER MUST CONTAIN ALL OF THE
15 FOLLOWING PROVISIONS AND EXPRESSLY REQUIRE THE WRITTEN CONSENT OF
16 THE INSURER BEFORE MAKING PUBLIC INFORMATION PROVIDED UNDER THIS
17 CHAPTER:

18 (A) SPECIFIC PROCEDURES AND PROTOCOLS FOR MAINTAINING THE
19 CONFIDENTIALITY AND SECURITY OF CGAD-RELATED INFORMATION SHARED
20 WITH THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS CHAPTER.

21 (B) PROCEDURES AND PROTOCOLS FOR SHARING BY THE NAIC ONLY WITH
22 OTHER STATE REGULATORS FROM STATES IN WHICH THE INSURANCE GROUP HAS
23 DOMICILED INSURERS. THE AGREEMENT MUST PROVIDE THAT THE RECIPIENT
24 AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED
25 STATUS OF THE CGAD-RELATED DOCUMENTS, MATERIALS, OR OTHER
26 INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO
27 MAINTAIN CONFIDENTIALITY.

1 (C) A PROVISION SPECIFYING THAT OWNERSHIP OF THE CGAD-RELATED
2 INFORMATION SHARED WITH THE NAIC OR A THIRD-PARTY CONSULTANT
3 REMAINS WITH THE DEPARTMENT AND THE NAIC'S OR THIRD-PARTY
4 CONSULTANT'S USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF
5 THE DIRECTOR.

6 (D) A PROVISION THAT PROHIBITS THE NAIC OR A THIRD-PARTY
7 CONSULTANT FROM STORING THE INFORMATION SHARED UNDER THIS CHAPTER
8 IN A PERMANENT DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED.

9 (E) A PROVISION REQUIRING THE NAIC OR THIRD-PARTY CONSULTANT
10 TO PROVIDE PROMPT NOTICE TO THE DIRECTOR AND TO THE INSURER OR
11 INSURANCE GROUP REGARDING ANY SUBPOENA, REQUEST FOR DISCLOSURE, OR
12 REQUEST FOR PRODUCTION OF THE INSURER'S CGAD-RELATED INFORMATION.

13 (F) A REQUIREMENT THAT THE NAIC OR A THIRD-PARTY CONSULTANT
14 CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR
15 ADMINISTRATIVE ACTION IN WHICH THE NAIC OR A THIRD-PARTY CONSULTANT
16 MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE
17 INSURER SHARED WITH THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS
18 CHAPTER.

19 SEC. 1765. AN INSURER THAT DOES NOT, WITHOUT JUST CAUSE,
20 TIMELY FILE THE CGAD AS REQUIRED IN THIS CHAPTER, AFTER NOTICE AND
21 HEARING, SHALL PAY A CIVIL FINE OF \$1,000.00 FOR EACH DAY'S DELAY,
22 TO BE RECOVERED BY THE DIRECTOR AND PAID INTO THE GENERAL FUND OF
23 THIS STATE. THE MAXIMUM CIVIL FINE UNDER THIS SECTION IS
24 \$75,000.00. THE DIRECTOR MAY REDUCE THE PENALTY IF THE INSURER
25 DEMONSTRATES TO THE DIRECTOR THAT THE PENALTY WOULD CAUSE A
26 FINANCIAL HARDSHIP TO THE INSURER.

27 SEC. 1767. IF IN A FINAL DECISION A COURT HOLDS SECTION 1761

1 OF THIS CHAPTER TO BE INVALID, THAT SECTION IS NOT SEVERABLE, AND
2 THE ENTIRE CHAPTER IS VOID AS OF THE DATE OF THE COURT DECISION.