

**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 and section 3032.

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, 2020 AND EACH
12 JUNE 1 AFTER THAT DATE, SUBMIT TO THE DIRECTOR A CORPORATE
13 GOVERNANCE ANNUAL DISCLOSURE AS PRESCRIBED BY THE DIRECTOR.

14 NOTWITHSTANDING ANY REQUEST FROM THE DIRECTOR MADE UNDER SUBSECTION
15 (3), IF THE INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER
16 SHALL SUBMIT THE REPORT REQUIRED BY THIS SECTION TO THE
17 COMMISSIONER OF THE LEAD STATE FOR THE INSURANCE GROUP, IN
18 ACCORDANCE WITH THE LAWS AND 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 OR INSURANCE
23 GROUP HAS IMPLEMENTED THE CORPORATE GOVERNANCE PRACTICES AND THAT A
24 COPY OF THE DISCLOSURE HAS BEEN PROVIDED TO THE INSURER'S BOARD OF
25 DIRECTORS OR THE APPROPRIATE COMMITTEE OF THE INSURER'S BOARD OF
26 DIRECTORS.

27 (3) AN INSURER NOT REQUIRED TO SUBMIT A CGAD UNDER THIS

1 SECTION SHALL SUBMIT A CGAD ON THE DIRECTOR'S REQUEST.

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

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

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

1 TO DUPLICATE THAT INFORMATION IN THE CGAD AND IS ONLY REQUIRED TO
2 CROSS-REFERENCE THE DOCUMENT IN WHICH THE INFORMATION IS INCLUDED.

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

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

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

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

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

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

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

1 INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO
2 MAINTAIN CONFIDENTIALITY.

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

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

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

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

1 OR THE INSURER'S OR INSURANCE GROUP'S COMPLIANCE WITH THIS CHAPTER.

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

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

7 (4) AS PART OF THE RETENTION PROCESS, A THIRD-PARTY CONSULTANT
8 SHALL VERIFY TO THE DIRECTOR, WITH WRITTEN NOTICE TO THE INSURER OR
9 INSURANCE GROUP, THAT IT IS FREE OF ANY CONFLICT OF INTEREST AND
10 THAT IT HAS INTERNAL PROCEDURES IN PLACE TO IDENTIFY AND MONITOR
11 COMPLIANCE WITH ANY CONFLICT THAT MAY ARISE AFTER ENGAGEMENT AND TO
12 COMPLY WITH THE CONFIDENTIALITY STANDARDS AND REQUIREMENTS OF THIS
13 CHAPTER.

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

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

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

1 DOCUMENTS, MATERIALS, OR OTHER INFORMATION AND HAS VERIFIED IN
2 WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

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

8 (D) A PROVISION THAT PROHIBITS THE NAIC OR A THIRD-PARTY
9 CONSULTANT FROM STORING THE INFORMATION SHARED UNDER THIS CHAPTER
10 IN A PERMANENT DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED
11 AND THAT REQUIRES THE NAIC OR THIRD-PARTY CONSULTANT TO PROMPTLY
12 RETURN OR DESTROY ALL CGAD-RELATED INFORMATION PROVIDED BY THE
13 INSURER OR INSURANCE GROUP.

14 (E) A PROVISION REQUIRING THE NAIC OR THIRD-PARTY CONSULTANT
15 TO PROVIDE PROMPT WRITTEN NOTICE TO THE DIRECTOR AND TO THE INSURER
16 OR INSURANCE GROUP REGARDING ANY SUBPOENA, REQUEST FOR DISCLOSURE,
17 OR REQUEST FOR PRODUCTION OF THE INSURER'S CGAD-RELATED
18 INFORMATION.

19 (F) A REQUIREMENT THAT THE NAIC OR A THIRD-PARTY CONSULTANT
20 CONSENT TO INTERVENTION BY AN INSURER OR INSURANCE GROUP IN ANY
21 JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH THE NAIC OR A THIRD-
22 PARTY CONSULTANT MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL
23 INFORMATION ABOUT THE INSURER SHARED WITH THE NAIC OR A THIRD-PARTY
24 CONSULTANT UNDER THIS CHAPTER.

25 SEC. 1765. (1) AN INSURER OR INSURANCE GROUP THAT DOES NOT,
26 WITHOUT JUST CAUSE, TIMELY FILE THE CGAD AS REQUIRED IN THIS
27 CHAPTER, AFTER WRITTEN NOTICE AND HEARING, SHALL PAY A CIVIL FINE

1 OF \$1,000.00 FOR EACH DAY'S DELAY, TO BE RECOVERED BY THE DIRECTOR
2 AND PAID INTO THE GENERAL FUND OF THIS STATE. THE MAXIMUM CIVIL
3 FINE UNDER THIS SECTION IS \$75,000.00. THE DIRECTOR MAY REDUCE OR
4 WAIVE THE PENALTY IF THE INSURER DEMONSTRATES TO THE DIRECTOR THAT
5 EITHER OF THE FOLLOWING APPLIES:

6 (A) THE PENALTY WOULD CAUSE A FINANCIAL HARDSHIP TO THE
7 INSURER.

8 (B) THERE IS JUST CAUSE FOR THE DELAYED FILING.

9 (2) ON WRITTEN REQUEST, THE DIRECTOR MAY GRANT A 90-DAY
10 EXTENSION FOR FILING THE CGAD.

11 SEC. 1767. IF IN A FINAL DECISION A COURT HOLDS SECTION 1761
12 OF THIS CHAPTER TO BE INVALID, THAT SECTION IS NOT SEVERABLE, AND
13 THE ENTIRE CHAPTER IS VOID AS OF THE DATE OF THE COURT DECISION.

14 SEC. 3032. IN AN ACTION BROUGHT IN A COURT IN THIS STATE, THE
15 COURT SHALL NOT APPLY A PRINCIPLE FROM THE AMERICAN LAW INSTITUTE'S
16 "RESTATEMENT OF THE LAW, LIABILITY INSURANCE" IN RULING ON AN ISSUE
17 IN THE CASE UNLESS THE PRINCIPLE IS CLEARLY EXPRESSED IN A STATUTE
18 OF THIS STATE, THE COMMON LAW, OR CASE LAW PRECEDENT OF THIS STATE.

19 Enacting section 1. This amendatory act takes effect January
20 1, 2020.