

HOUSE BILL No. 6520

November 27, 2018, Introduced by Rep. Theis 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 chapter 17A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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.

1 SEC. 1755. AS USED IN THIS CHAPTER:

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

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

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

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

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

11 SEC. 1757. (1) AN INSURER, OR THE INSURANCE GROUP OF WHICH THE
12 INSURER IS A MEMBER, SHALL, NO LATER THAN JUNE 1 OF EACH CALENDAR
13 YEAR, SUBMIT TO THE DIRECTOR A CORPORATE GOVERNANCE ANNUAL
14 DISCLOSURE. NOTWITHSTANDING ANY REQUEST FROM THE DIRECTOR MADE
15 UNDER SUBSECTION (3), IF THE INSURER IS A MEMBER OF AN INSURANCE
16 GROUP, THE INSURER SHALL SUBMIT THE REPORT REQUIRED BY THIS SECTION
17 TO THE COMMISSIONER OF THE LEAD STATE FOR THE INSURANCE GROUP, IN
18 ACCORDANCE WITH THE LAWS OF THE LEAD STATE, AS DETERMINED BY THE
19 PROCEDURES OUTLINED IN THE MOST RECENT "FINANCIAL ANALYSIS
20 HANDBOOK" ADOPTED BY THE NAIC.

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

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

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

21 (5) THE REVIEW OF THE CGAD AND ANY ADDITIONAL REQUESTS FOR
22 INFORMATION MUST BE MADE THROUGH THE LEAD STATE AS DETERMINED BY
23 THE PROCEDURES WITHIN THE MOST RECENT FINANCIAL ANALYSIS HANDBOOK
24 AS PROVIDED IN SUBSECTION (1).

25 (6) AN INSURER THAT PROVIDES INFORMATION SUBSTANTIALLY SIMILAR
26 TO THE INFORMATION REQUIRED BY THIS CHAPTER IN OTHER DOCUMENTS
27 PROVIDED TO THE DIRECTOR, INCLUDING PROXY STATEMENTS FILED IN

1 CONJUNCTION WITH FORM B REQUIREMENTS, OR OTHER STATE OR FEDERAL
2 FILINGS PROVIDED TO THE DEPARTMENT IS NOT REQUIRED TO DUPLICATE
3 THAT INFORMATION IN THE CGAD AND IS ONLY REQUIRED TO CROSS-
4 REFERENCE THE DOCUMENT IN WHICH THE INFORMATION IS INCLUDED.

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

14 (2) NOTWITHSTANDING SUBSECTION (1), THE CGAD MUST BE PREPARED
15 CONSISTENT WITH CHAPTER 10. DOCUMENTATION AND SUPPORTING
16 INFORMATION MUST BE MAINTAINED AND MADE AVAILABLE ON EXAMINATION OR
17 ON REQUEST OF THE DIRECTOR.

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

1 INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION
2 BROUGHT AS A PART OF THE DIRECTOR'S OFFICIAL DUTIES. THE DIRECTOR
3 SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS, OR OTHER
4 INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE
5 INSURER. THIS SECTION DOES NOT REQUIRE WRITTEN CONSENT OF THE
6 INSURER BEFORE THE DIRECTOR MAY SHARE OR RECEIVE CONFIDENTIAL
7 DOCUMENTS, MATERIALS, OR OTHER CGAD-RELATED INFORMATION UNDER
8 SUBSECTION (3) TO ASSIST IN THE PERFORMANCE OF THE DIRECTOR'S
9 REGULAR DUTIES.

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

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

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

1 AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED
2 STATUS OF THE CGAD-RELATED DOCUMENTS, MATERIALS, OR OTHER
3 INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO
4 MAINTAIN CONFIDENTIALITY.

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

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

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

25 SEC. 1763. (1) THE DIRECTOR MAY RETAIN, AT THE INSURER'S
26 EXPENSE, THIRD-PARTY CONSULTANTS, INCLUDING ATTORNEYS, ACTUARIES,
27 ACCOUNTANTS, AND OTHER EXPERTS NOT OTHERWISE A PART OF THE

1 DIRECTOR'S STAFF AS MAY BE REASONABLY NECESSARY TO ASSIST THE
2 DIRECTOR IN REVIEWING THE CGAD AND RELATED INFORMATION OR THE
3 INSURER'S COMPLIANCE WITH THIS CHAPTER.

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

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

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

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

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

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

1 STATUS OF THE CGAD-RELATED DOCUMENTS, MATERIALS, OR OTHER
2 INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO
3 MAINTAIN CONFIDENTIALITY.

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

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

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

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

22 SEC. 1765. AN INSURER THAT DOES NOT, WITHOUT JUST CAUSE,
23 TIMELY FILE THE CGAD AS REQUIRED IN THIS CHAPTER, AFTER NOTICE AND
24 HEARING, SHALL PAY A CIVIL FINE OF \$1,000.00 FOR EACH DAY'S DELAY,
25 TO BE RECOVERED BY THE DIRECTOR AND PAID INTO THE GENERAL FUND OF
26 THIS STATE. THE MAXIMUM CIVIL FINE UNDER THIS SECTION IS
27 \$75,000.00. THE DIRECTOR MAY REDUCE THE PENALTY IF THE INSURER

1 DEMONSTRATES TO THE DIRECTOR THAT THE PENALTY WOULD CAUSE A
2 FINANCIAL HARDSHIP TO THE INSURER.

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