

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5823

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 2108 and 2406 (MCL 500.2108 and 500.2406),
section 2406 as amended by 1993 PA 200, and by adding chapter 17.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER 17

RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT

SEC. 1701. AS USED IN THIS CHAPTER:

(A) "INSURANCE GROUP" MEANS, FOR THE PURPOSE OF CONDUCTING AN
ORSA, INSURERS AND AFFILIATES INCLUDED WITHIN AN INSURANCE HOLDING
COMPANY SYSTEM.

(B) "INSURER" MEANS THAT TERM AS DEFINED IN SECTION 106.
INSURER ALSO INCLUDES A FRATERNAL BENEFIT SOCIETY AS THAT TERM IS

1 DEFINED IN SECTION 8164. INSURER DOES NOT INCLUDE AGENCIES,
2 AUTHORITIES, OR INSTRUMENTALITIES OF THE UNITED STATES, ITS
3 POSSESSIONS AND TERRITORIES, THE COMMONWEALTH OF PUERTO RICO, THE
4 DISTRICT OF COLUMBIA, OR A STATE OR POLITICAL SUBDIVISION OF A
5 STATE.

6 (C) "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA" MEANS A
7 CONFIDENTIAL INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE, SCALE,
8 AND COMPLEXITY OF AN INSURER OR INSURANCE GROUP, CONDUCTED BY THAT
9 INSURER OR INSURANCE GROUP, OF THE MATERIAL AND RELEVANT RISKS
10 ASSOCIATED WITH THE INSURER OR INSURANCE GROUP'S CURRENT BUSINESS
11 PLAN, AND THE SUFFICIENCY OF CAPITAL RESOURCES TO SUPPORT THOSE
12 RISKS.

13 (D) "ORSA GUIDANCE MANUAL" MEANS THE OWN RISK AND SOLVENCY
14 ASSESSMENT GUIDANCE MANUAL AS ADOPTED AND PRESCRIBED BY THE
15 DIRECTOR. A CHANGE IN THE ORSA GUIDANCE MANUAL IS EFFECTIVE ON THE
16 JANUARY 1 FOLLOWING THE CALENDAR YEAR IN WHICH THE CHANGES HAVE
17 BEEN ADOPTED AND PRESCRIBED BY THE DIRECTOR.

18 (E) "ORSA SUMMARY REPORT" MEANS A CONFIDENTIAL HIGH-LEVEL
19 SUMMARY OF AN INSURER OR INSURANCE GROUP'S ORSA.

20 SEC. 1703. AN INSURER SHALL MAINTAIN A RISK MANAGEMENT
21 FRAMEWORK TO ASSIST THE INSURER WITH IDENTIFYING, ASSESSING,
22 MONITORING, MANAGING, AND REPORTING ON ITS MATERIAL AND RELEVANT
23 RISKS. THIS REQUIREMENT MAY BE SATISFIED IF THE INSURANCE GROUP OF
24 WHICH THE INSURER IS A MEMBER MAINTAINS A RISK MANAGEMENT FRAMEWORK
25 APPLICABLE TO THE OPERATIONS OF THE INSURER.

26 SEC. 1705. SUBJECT TO SECTION 1709, AN INSURER, OR THE
27 INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER, SHALL REGULARLY

1 CONDUCT AN ORSA CONSISTENT WITH A PROCESS COMPARABLE TO THE ORSA
2 GUIDANCE MANUAL. THE ORSA SHALL BE CONDUCTED NO LESS THAN ANNUALLY
3 BUT ALSO AT ANY TIME WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK
4 PROFILE OF THE INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER
5 IS A MEMBER.

6 SEC. 1707. (1) AN INSURER SHALL ANNUALLY SUBMIT TO THE
7 DIRECTOR AN ORSA SUMMARY REPORT, OR ANY COMBINATION OF REPORTS THAT
8 TOGETHER CONTAIN THE INFORMATION AS DESCRIBED IN THE ORSA GUIDANCE
9 MANUAL, APPLICABLE TO THE INSURER, THE INSURANCE GROUP OF WHICH IT
10 IS A MEMBER, OR BOTH. WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF
11 THE AMENDATORY ACT THAT ADDED THIS SECTION, THE INSURER SHALL
12 SUBMIT TO THE DIRECTOR THE CALENDAR DATE THE INSURER WILL ANNUALLY
13 SUBMIT THE ORSA SUMMARY REPORT REQUIRED UNDER THIS SECTION. IF THE
14 INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT
15 A REPORT REQUIRED BY THIS SUBSECTION IF THE DIRECTOR IS THE LEAD
16 STATE REGULATOR OF THE INSURANCE GROUP IN ACCORDANCE WITH THE
17 PROCEDURES, AS ADOPTED BY THE DIRECTOR, WITHIN THE NATIONAL
18 ASSOCIATION OF INSURANCE COMMISSIONERS FINANCIAL ANALYSIS HANDBOOK.

19 (2) A REPORT REQUIRED UNDER SUBSECTION (1) MUST INCLUDE A
20 SIGNATURE OF THE INSURER OR INSURANCE GROUP'S CHIEF RISK OFFICER OR
21 OTHER EXECUTIVE HAVING RESPONSIBILITY FOR THE OVERSIGHT OF THE
22 INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS ATTESTING TO THE BEST
23 OF HIS OR HER BELIEF AND KNOWLEDGE THAT THE INSURER APPLIES THE
24 ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA SUMMARY
25 REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE
26 INSURER'S BOARD OF DIRECTORS OR APPROPRIATE COMMITTEE OF THE
27 INSURER'S BOARD OF DIRECTORS.

1 (3) AN INSURER MAY COMPLY WITH SUBSECTION (1) BY PROVIDING THE
2 MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT PROVIDED BY THE
3 INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE
4 INSURER IS A MEMBER TO A COMMISSIONER OF ANOTHER STATE OR TO A
5 SUPERVISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT
6 PROVIDES INFORMATION THAT IS COMPARABLE TO THE INFORMATION
7 PRESCRIBED BY THE ORSA GUIDANCE MANUAL. A REPORT IN A LANGUAGE
8 OTHER THAN ENGLISH MUST BE ACCOMPANIED BY A TRANSLATION OF THAT
9 REPORT INTO THE ENGLISH LANGUAGE.

10 SEC. 1709. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5),
11 AN INSURER IS EXEMPT FROM THE REQUIREMENTS OF THIS CHAPTER, IF BOTH
12 OF THE FOLLOWING APPLY:

13 (A) THE INSURER HAS ANNUAL DIRECT WRITTEN AND UNAFFILIATED
14 ASSUMED PREMIUM, INCLUDING INTERNATIONAL DIRECT AND ASSUMED PREMIUM
15 BUT EXCLUDING PREMIUMS REINSURED WITH THE FEDERAL CROP INSURANCE
16 CORPORATION AND FEDERAL FLOOD PROGRAM, LESS THAN \$500,000,000.00.

17 (B) THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER HAS
18 ANNUAL DIRECT WRITTEN AND UNAFFILIATED ASSUMED PREMIUM, INCLUDING
19 INTERNATIONAL DIRECT AND ASSUMED PREMIUM BUT EXCLUDING PREMIUMS
20 REINSURED WITH THE FEDERAL CROP INSURANCE CORPORATION AND FEDERAL
21 FLOOD PROGRAM, LESS THAN \$1,000,000,000.00.

22 (2) IF AN INSURER QUALIFIES FOR EXEMPTION UNDER SUBSECTION
23 (1) (A) BUT THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER
24 DOES NOT QUALIFY FOR EXEMPTION UNDER SUBSECTION (1) (B), THE ORSA
25 SUMMARY REPORT THAT MAY BE REQUIRED UNDER SECTION 1707 MUST INCLUDE
26 EVERY INSURER WITHIN THE INSURANCE GROUP. THIS REQUIREMENT MAY BE
27 SATISFIED BY THE SUBMISSION OF MORE THAN 1 ORSA SUMMARY REPORT FOR

1 ANY COMBINATION OF INSURERS IF THE COMBINATION OF REPORTS INCLUDES
2 EVERY INSURER WITHIN THE INSURANCE GROUP.

3 (3) IF AN INSURER DOES NOT QUALIFY FOR EXEMPTION UNDER
4 SUBSECTION (1) (A) BUT THE INSURANCE GROUP OF WHICH IT IS A MEMBER
5 QUALIFIES FOR EXEMPTION UNDER SUBSECTION (1) (B), THE ONLY ORSA
6 SUMMARY REPORT THAT MAY BE REQUIRED UNDER SECTION 1707 IS THE
7 REPORT APPLICABLE TO THE INSURER.

8 (4) SUBJECT TO SUBSECTION (5), AN INSURER THAT DOES NOT
9 QUALIFY FOR EXEMPTION UNDER SUBSECTION (1) MAY APPLY TO THE
10 DIRECTOR FOR A WAIVER FROM THE REQUIREMENTS OF THIS CHAPTER BASED
11 UPON UNIQUE CIRCUMSTANCES. IN DECIDING WHETHER TO GRANT THE
12 INSURER'S REQUEST FOR A WAIVER, THE DIRECTOR MAY CONSIDER THE TYPE
13 AND VOLUME OF BUSINESS WRITTEN, OWNERSHIP AND ORGANIZATIONAL
14 STRUCTURE, AND ANY OTHER FACTOR THE DIRECTOR CONSIDERS RELEVANT TO
15 THE INSURER OR INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER. IF
16 THE INSURER IS PART OF AN INSURANCE GROUP WITH INSURERS DOMICILED
17 IN MORE THAN 1 STATE, THE DIRECTOR SHALL COORDINATE WITH THE LEAD
18 STATE COMMISSIONER AND WITH THE OTHER DOMICILIARY COMMISSIONERS IN
19 CONSIDERING WHETHER TO GRANT THE INSURER'S REQUEST FOR A WAIVER.

20 (5) NOTWITHSTANDING THE EXEMPTION PROVIDED IN SUBSECTION (1),
21 THE DIRECTOR MAY REQUIRE 1 OR MORE OF THE FOLLOWING:

22 (A) THE DIRECTOR MAY REQUIRE THAT AN INSURER MAINTAIN A RISK
23 MANAGEMENT FRAMEWORK, CONDUCT AN ORSA, AND FILE AN ORSA SUMMARY
24 REPORT BASED ON UNIQUE CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO,
25 THE TYPE AND VOLUME OF BUSINESS WRITTEN, OWNERSHIP AND
26 ORGANIZATIONAL STRUCTURE, FEDERAL AGENCY REQUESTS, AND
27 INTERNATIONAL SUPERVISOR REQUESTS.

1 (B) THE DIRECTOR MAY REQUIRE THAT AN INSURER MAINTAIN A RISK
2 MANAGEMENT FRAMEWORK, CONDUCT AN ORSA, AND FILE AN ORSA SUMMARY
3 REPORT IF THE DIRECTOR DETERMINES 1 OR MORE OF THE FOLLOWING:

4 (i) THE INSURER HAS RISK-BASED CAPITAL FOR A COMPANY ACTION
5 LEVEL EVENT.

6 (ii) THE INSURER MEETS 1 OR MORE OF THE CONDITIONS DESCRIBED IN
7 SECTION 436.

8 (iii) THE OPERATION OF THE INSURER IS HAZARDOUS TO
9 POLICYHOLDERS, CREDITORS, OR THE PUBLIC UNDER SECTION 436A.

10 (iv) THE INSURER EXHIBITS QUALITIES OF A TROUBLED INSURER.

11 (6) IF AN INSURER THAT QUALIFIES FOR AN EXEMPTION UNDER
12 SUBSECTION (1) SUBSEQUENTLY NO LONGER QUALIFIES FOR THAT EXEMPTION
13 BECAUSE OF AN INCREASE IN PREMIUM AS REFLECTED IN THE INSURER'S
14 MOST RECENT ANNUAL STATEMENT OR IN THE MOST RECENT ANNUAL
15 STATEMENTS OF THE INSURERS WITHIN THE INSURANCE GROUP OF WHICH THE
16 INSURER IS A MEMBER, THE INSURER HAS 1 YEAR FOLLOWING THE YEAR THE
17 PREMIUM EXCEEDED THE LIMITATION PROVIDED IN SUBSECTION (1) TO
18 COMPLY WITH THIS CHAPTER.

19 SEC. 1711. (1) SUBJECT TO SUBSECTION (2), AN INSURER SHALL
20 PREPARE AN ORSA SUMMARY REPORT UNDER SECTION 1707 CONSISTENT WITH
21 THE ORSA GUIDANCE MANUAL PRESCRIBED BY THE DIRECTOR. THE INSURER
22 SHALL MAINTAIN AND MAKE AVAILABLE TO THE DIRECTOR DOCUMENTATION AND
23 SUPPORTING INFORMATION RELATING TO THE ORSA SUMMARY REPORT.

24 (2) THE DIRECTOR SHALL REVIEW AN ORSA SUMMARY REPORT AND ANY
25 ADDITIONAL REQUESTS FOR INFORMATION USING SIMILAR PROCEDURES USED
26 IN THE ANALYSIS AND EXAMINATION OF MULTISTATE OR GLOBAL INSURERS
27 AND INSURANCE GROUPS.

1 SEC. 1713. (1) DOCUMENTS, MATERIALS, OR OTHER INFORMATION,
2 INCLUDING THE ORSA SUMMARY REPORT, IN THE POSSESSION OR CONTROL OF
3 THE DIRECTOR THAT ARE OBTAINED BY, CREATED BY, OR DISCLOSED TO THE
4 DIRECTOR OR ANY OTHER PERSON UNDER THIS CHAPTER ARE CONSIDERED
5 PROPRIETARY AND TO CONTAIN TRADE SECRETS. THE DOCUMENTS, MATERIALS,
6 OR OTHER INFORMATION ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT
7 SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA
8 442, MCL 15.231 TO 15.246, ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT
9 SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL
10 ACTION. HOWEVER, THE DIRECTOR MAY USE THE DOCUMENTS, MATERIALS, OR
11 OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL
12 ACTION BROUGHT AS A PART OF THE DIRECTOR'S OFFICIAL DUTIES. THE
13 DIRECTOR SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS, OR
14 OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE
15 INSURER TO WHICH IT PERTAINS.

16 (2) THE DIRECTOR OR ANY PERSON WHO RECEIVED DOCUMENTS,
17 MATERIALS, OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION
18 OR OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE DIRECTOR OR
19 WITH WHOM THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION ARE SHARED
20 UNDER THIS ACT SHALL NOT TESTIFY IN A PRIVATE CIVIL ACTION
21 CONCERNING CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION
22 DESCRIBED IN SUBSECTION (1).

23 (3) THE DIRECTOR MAY DO ALL OF THE FOLLOWING:

24 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, ON
25 REQUEST, SHARE DOCUMENTS, MATERIALS, OR OTHER ORSA-RELATED
26 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
27 MATERIALS, OR INFORMATION DESCRIBED IN SUBSECTION (1), INCLUDING

1 PROPRIETARY AND TRADE SECRET DOCUMENTS AND MATERIALS WITH OTHER
2 STATE, FEDERAL, AND INTERNATIONAL FINANCIAL REGULATORY AGENCIES,
3 INCLUDING MEMBERS OF A SUPERVISORY COLLEGE DESCRIBED IN CHAPTER 13,
4 WITH THE NAIC AND WITH ANY THIRD-PARTY CONSULTANTS DESIGNATED BY
5 THE DIRECTOR. THE DIRECTOR SHALL NOT SHARE DOCUMENTS, MATERIALS, OR
6 OTHER ORSA-RELATED INFORMATION DESCRIBED IN THIS SUBDIVISION UNLESS
7 THE RECIPIENT AGREES IN WRITING TO MAINTAIN THE CONFIDENTIALITY AND
8 PRIVILEGED STATUS OF THE ORSA-RELATED DOCUMENTS, MATERIALS, OR
9 OTHER INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY
10 TO MAINTAIN CONFIDENTIALITY.

11 (B) SUBJECT TO THIS SUBDIVISION, RECEIVE DOCUMENTS, MATERIALS,
12 OR OTHER ORSA-RELATED INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL
13 AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING
14 PROPRIETARY AND TRADE-SECRET INFORMATION OR DOCUMENTS, FROM
15 REGULATORY OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS,
16 INCLUDING MEMBERS OF A SUPERVISORY COLLEGE DESCRIBED IN CHAPTER 13,
17 AND FROM THE NAIC. THE DIRECTOR SHALL MAINTAIN AS CONFIDENTIAL OR
18 PRIVILEGED ANY DOCUMENTS, MATERIALS, OR INFORMATION RECEIVED WITH
19 NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED
20 UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE
21 DOCUMENT, MATERIAL, OR INFORMATION.

22 (4) THE DIRECTOR SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE
23 NAIC OR A THIRD-PARTY CONSULTANT GOVERNING SHARING AND USE OF
24 INFORMATION PROVIDED UNDER THIS CHAPTER. THE WRITTEN AGREEMENT MUST
25 DO ALL OF THE FOLLOWING:

26 (A) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE
27 CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE NAIC OR

1 A THIRD-PARTY CONSULTANT UNDER THIS CHAPTER, INCLUDING PROCEDURES
2 AND PROTOCOLS FOR SHARING BY THE NAIC WITH OTHER STATE REGULATORS
3 FROM STATES IN WHICH THE INSURANCE GROUP HAS DOMICILED INSURERS.

4 (B) CONTAIN A STATEMENT THAT THE RECIPIENT AGREES IN WRITING
5 TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE ORSA-
6 RELATED DOCUMENTS, MATERIALS, OR OTHER INFORMATION AND HAS VERIFIED
7 IN WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY.

8 (C) SPECIFY THAT THE DIRECTOR OWNS THE INFORMATION SHARED WITH
9 THE NAIC OR A THIRD-PARTY CONSULTANT UNDER THIS CHAPTER AND THAT
10 THE NAIC'S OR THIRD-PARTY CONSULTANT'S USE OF THE INFORMATION IS
11 SUBJECT TO THE DIRECTION OF THE DIRECTOR.

12 (D) PROHIBIT THE NAIC OR THIRD-PARTY CONSULTANT FROM STORING
13 THE INFORMATION SHARED UNDER THIS CHAPTER IN A PERMANENT DATABASE
14 AFTER THE UNDERLYING ANALYSIS IS COMPLETED.

15 (E) REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE
16 CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NAIC OR THIRD-
17 PARTY CONSULTANT UNDER THIS CHAPTER IS SUBJECT TO A REQUEST OR
18 SUBPOENA TO THE NAIC OR THIRD-PARTY CONSULTANT FOR DISCLOSURE OR
19 PRODUCTION.

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

25 (G) FOR AN AGREEMENT INVOLVING A THIRD-PARTY CONSULTANT,
26 PROVIDE FOR THE INSURER'S WRITTEN CONSENT.

27 (5) THE SHARING OF INFORMATION AND DOCUMENTS BY THE DIRECTOR

1 UNDER THIS CHAPTER IS NOT A DELEGATION OF REGULATORY AUTHORITY OR
2 RULE-MAKING, AND THE DIRECTOR IS SOLELY RESPONSIBLE FOR THE
3 ADMINISTRATION, EXECUTION, AND ENFORCEMENT OF THIS CHAPTER.

4 (6) THE DISCLOSURE OR SHARING OF DOCUMENTS, PROPRIETARY AND
5 TRADE-SECRET MATERIALS, OR OTHER ORSA-RELATED INFORMATION TO THE
6 DIRECTOR OR OTHER PERSON UNDER THIS CHAPTER IS NOT A WAIVER OF AN
7 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY.

8 (7) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
9 POSSESSION OR CONTROL OF THE NAIC OR THIRD-PARTY CONSULTANTS UNDER
10 THIS CHAPTER ARE CONFIDENTIAL AND PRIVILEGED, ARE NOT SUBJECT TO
11 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
12 15.231 TO 15.246, ARE NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT
13 TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN A PRIVATE CIVIL ACTION.

14 (8) DOCUMENTS, MATERIALS, OR OTHER INFORMATION IN THE
15 POSSESSION OF AN INSURER CREATED BY THE INSURER TO COMPLY WITH THIS
16 CHAPTER IS CONFIDENTIAL AND PRIVILEGED, IS NOT SUBJECT TO SUBPOENA
17 OR TO DISCOVERY, AND IS NOT ADMISSIBLE IN EVIDENCE IN A PRIVATE
18 CIVIL ACTION.

19 SEC. 1715. AN INSURER THAT DOES NOT, WITHOUT JUST CAUSE,
20 TIMELY FILE AN ORSA SUMMARY REPORT AS REQUIRED IN THIS CHAPTER
21 SHALL PAY A CIVIL FINE OF \$1,000.00 FOR EACH DAY'S DELAY, TO BE
22 RECOVERED BY THE DIRECTOR AND PAID INTO THE GENERAL FUND. THE
23 MAXIMUM CIVIL FINE UNDER THIS SECTION IS \$75,000.00. THE DIRECTOR
24 MAY REDUCE THE PENALTY IF THE INSURER DEMONSTRATES TO THE DIRECTOR
25 THAT THE PENALTY WOULD CAUSE A FINANCIAL HARDSHIP TO THE INSURER.

26 Sec. 2108. (1) On the effective date ~~thereof, each insurer~~
27 ~~shall file with the commissioner every~~ OF A manual of

1 classification, ~~every~~ manual of rules and rates, ~~every~~ rating plan,
 2 ~~and every~~ OR modification of a manual of classification, manual of
 3 rules and rates, or a rating plan ~~which it~~ **THAT AN INSURER** proposes
 4 to use for automobile insurance ~~and~~ OR home insurance, **THE INSURER**
 5 **SHALL FILE THE MANUAL OR PLAN WITH THE DIRECTOR.** Each filing ~~shall~~
 6 **UNDER THIS SUBSECTION MUST** state the character and extent of the
 7 coverage contemplated. ~~Each~~ **AN** insurer **THAT IS** subject to this
 8 chapter ~~who~~ **AND THAT** maintains rates in any part of this state
 9 shall at all times maintain rates in effect for all eligible
 10 persons meeting the underwriting criteria of the insurer.

11 (2) An insurer may satisfy its obligation to make filings
 12 under subsection (1) by becoming a member of, or a subscriber to, a
 13 rating organization licensed under chapter 24 or chapter 26 ~~which~~
 14 **THAT** makes ~~these~~ **THE** filings, and by filing with the ~~commissioner~~
 15 **DIRECTOR** a copy of its authorization of the rating organization to
 16 make ~~these~~ **THE** filings on its behalf. ~~Nothing contained in this~~
 17 **THIS** chapter ~~shall be construed as requiring any~~ **DOES NOT REQUIRE**
 18 **AN** insurer to become a member of or a subscriber to ~~any~~ **A** rating
 19 organization. ~~Insurers~~ **AN INSURER** may file and use deviations from
 20 filings made on ~~their~~ **ITS** behalf. ~~, which~~ **THE** deviations ~~shall be~~
 21 **ARE** subject to ~~the provisions of this chapter.~~

22 (3) ~~Each~~ **A** filing ~~shall~~ **UNDER THIS SECTION MUST** be accompanied
 23 by a certification by or on behalf of the insurer that, to the best
 24 of ~~its~~ **THE INSURER'S** information and belief, the filing conforms to
 25 the requirements of this chapter.

26 (4) ~~Each~~ **A** filing ~~shall~~ **UNDER THIS SECTION MUST** include
 27 information that supports the filing with respect to the

1 requirements of section 2109. The information may include 1 or more
2 of the following:

3 (a) The experience or judgment of the insurer or rating
4 organization making the filing.

5 (b) The interpretation of the insurer or rating organization
6 of any statistical data it relies ~~upon~~.ON.

7 (c) The experience of other insurers or rating organizations.

8 (d) Any other relevant information.

9 (5) ~~A~~EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A
10 filing UNDER THIS SECTION and any accompanying information ~~shall be~~
11 ~~open to public inspection upon filing.~~IS A PUBLIC RECORD AS
12 PROVIDED IN THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231
13 TO 15.246. AN INSURER OR A RATING ORGANIZATION FILING ON THE
14 INSURER'S BEHALF MAY DESIGNATE THE FILING OR ANY ACCOMPANYING
15 INFORMATION AS A TRADE SECRET. IF THE DIRECTOR DETERMINES THAT THE
16 FILING OR ANY ACCOMPANYING INFORMATION IS A TRADE SECRET, THE
17 FILING OR ANY ACCOMPANYING INFORMATION IS EXEMPT FROM THE FREEDOM
18 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. AS USED IN
19 THIS SUBSECTION, "TRADE SECRET" MEANS THAT TERM AS DEFINED IN
20 SECTION 2 OF THE UNIFORM TRADE SECRETS ACT, 1998 PA 448, MCL
21 445.1902.

22 (6) An insurer shall not make, issue, or renew a contract or
23 policy except in accordance with filings ~~which~~THAT are in effect
24 for the insurer ~~pursuant to~~UNDER this chapter.

25 Sec. 2406. (1) Except for worker's compensation insurance,
26 ~~every~~AN insurer shall file with the ~~commissioner~~everyDIRECTOR A
27 manual of classification, ~~every~~manual of rules and rates, ~~every~~

1 rating plan, ~~and every~~ **OR** modification of ~~any of the foregoing~~ **A**
 2 **MANUAL OF CLASSIFICATION, MANUAL OF RULES AND RATES, OR RATING PLAN**
 3 that it ~~THE INSURER~~ proposes to use. ~~Every such~~ **EACH** filing shall
 4 **UNDER THIS SUBSECTION MUST** state the proposed effective date
 5 ~~thereof~~ **OF THE FILING** and ~~shall~~ **MUST** indicate the character and
 6 extent of the coverage contemplated. If a filing is not accompanied
 7 by the information upon which the insurer supports the filing, and
 8 the ~~commissioner~~ **DIRECTOR** does not have sufficient information to
 9 determine ~~whether~~ **IF** the filing meets the requirements of this
 10 chapter, the ~~commissioner~~ **DIRECTOR** shall within 10 days of the
 11 filing give written notice to the insurer to furnish the
 12 information ~~upon which it~~ **THAT** supports the filing. The information
 13 furnished in support of a filing may include the experience or
 14 judgment of the insurer or rating organization making the filing,
 15 its interpretation of any statistical data it relies upon, the
 16 experience of other insurers or rating organizations, or any other
 17 relevant factors. ~~A filing and any supporting information shall be~~
 18 ~~open to public inspection after the filing becomes effective.~~

19 (2) Except for worker's compensation insurance, an insurer may
 20 satisfy its obligation to make ~~such~~ filings by becoming a member
 21 of, or a subscriber to, a licensed rating organization that makes
 22 ~~such~~ filings, and by filing with the ~~commissioner~~ **DIRECTOR** a copy
 23 of its authorization of the rating organization to make ~~such~~
 24 filings on its behalf. ~~Nothing contained in this~~ **THIS** chapter shall
 25 ~~be construed as requiring any~~ **DOES NOT REQUIRE AN** insurer to become
 26 a member of or a subscriber to ~~any~~ **A** rating organization.

27 (3) For worker's compensation insurance in this state, the

1 insurer shall file with the ~~commissioner~~ **DIRECTOR** all rates and
2 rating systems. ~~Every insurer that insures worker's compensation in~~
3 ~~this state on the effective date of this subsection shall file the~~
4 ~~rates not later than the effective date of this subsection.~~

5 (4) ~~Except as provided in subsection (3) and as otherwise~~
6 ~~provided in this subsection, the~~ **THE** rates and rating systems for
7 worker's compensation insurance ~~shall~~ **MUST** be filed not later than
8 the date the rates and rating systems are to be effective. ~~However,~~
9 ~~if the insurer providing worker's compensation insurance is~~
10 ~~controlled by a nonprofit health care corporation formed pursuant~~
11 ~~to the nonprofit health care corporation reform act, Act No. 350 of~~
12 ~~the Public Acts of 1980, being sections 550.1101 to 550.1704 of the~~
13 ~~Michigan Compiled Laws, the rates and rating systems that it~~
14 ~~proposes to use shall be filed with the commissioner not less than~~
15 ~~45 days before the effective date of the filing. These filings~~
16 ~~shall be considered to meet~~ **A FILING UNDER THIS SUBSECTION MEETS**
17 the requirements of this chapter unless and until the ~~commissioner~~
18 **DIRECTOR** disapproves a filing pursuant to ~~UNDER~~ section 2418 or
19 2420.

20 (5) ~~Each~~ **A** filing under subsections (3) and (4) ~~shall~~ **MUST** be
21 accompanied by a certification by the insurer that, to the best of
22 ~~its~~ **THE INSURER'S** information and belief, the filing conforms to
23 the requirements of this chapter.

24 (6) **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A FILING**
25 **UNDER THIS SECTION AND ANY SUPPORTING INFORMATION IS A PUBLIC**
26 **RECORD AS PROVIDED IN THE FREEDOM OF INFORMATION ACT, 1976 PA 442,**
27 **MCL 15.231 TO 15.246. AN INSURER OR A RATING ORGANIZATION FILING ON**

1 THE INSURER'S BEHALF MAY DESIGNATE THE FILING OR ANY ACCOMPANYING
2 INFORMATION AS A TRADE SECRET. IF THE DIRECTOR DETERMINES THAT THE
3 FILING OR ANY ACCOMPANYING INFORMATION IS A TRADE SECRET, THE
4 FILING OR ANY ACCOMPANYING INFORMATION IS EXEMPT FROM THE FREEDOM
5 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. AS USED IN
6 THIS SUBSECTION, "TRADE SECRET" MEANS THAT TERM AS DEFINED IN
7 SECTION 2 OF THE UNIFORM TRADE SECRETS ACT, 1998 PA 448, MCL
8 445.1902.

9 Enacting section 1. This amendatory act does not take effect
10 unless House Bill No. 5792 of the 97th Legislature is enacted into
11 law.