

# HOUSE BILL No. 4158

February 14, 1989, Introduced by Reps. Brown, Middaugh, Johnson, Varga, Weeks, Palamara, Clack, Dutko, Rocca, Stallworth and Runco and referred to the Committee on Insurance.

A bill to amend section 3104 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

as amended by Act No. 445 of the Public Acts of 1980, being section 500.3104 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3104 of Act No. 218 of the Public Acts  
2 of 1956, as amended by Act No. 445 of the Public Acts of 1980,  
3 being section 500.3104 of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 3104. (1) An unincorporated, nonprofit association to  
6 be known as the catastrophic claims association, hereinafter  
7 referred to as the association, is created. Each insurer engaged  
8 in writing insurance coverages which provide the security  
9 required by section 3101(1) within this state, as a condition of

1 its authority to transact insurance in this state, shall be a  
2 member of the association and shall be bound by the plan of oper-  
3 ation of the association. Each insurer engaged in writing insur-  
4 ance coverages which provide the security required by section  
5 3103(1) within this state, as a condition of its authority to  
6 transact insurance in this state, shall be considered a member of  
7 the association, but only for purposes of assessments under sub-  
8 section (7)(d). Except as expressly provided in this section,  
9 the association shall not be subject to any laws of this state  
10 with respect to insurers, but in all other respects the associa-  
11 tion shall be subject to the laws of this state to the extent  
12 that the association would be were it an insurer organized and  
13 subsisting under chapter 50.

14 (2) The association shall provide and each member shall  
15 accept indemnification for 100% of the amount of ultimate loss  
16 sustained under personal protection insurance coverages in excess  
17 of ~~-\$250,000.00~~ \$500,000.00 in each loss occurrence ADJUSTED  
18 ANNUALLY IN ACCORDANCE WITH THE CONSUMER PRICE INDEX. As used in  
19 this section: —

20 (A) "CONSUMER PRICE INDEX" MEANS THE ANNUAL AVERAGE PERCENTAGE  
21 INCREASE IN THE DETROIT CONSUMER PRICE INDEX FOR ALL ITEMS  
22 FOR THE PRIOR 12-MONTH PERIOD AS REPORTED BY THE UNITED STATES  
23 DEPARTMENT OF LABOR AND AS CERTIFIED BY THE COMMISSIONER.

24 (B) ~~—"ultimate"~~ "ULTIMATE loss" means the actual loss  
25 amounts which a member is obligated to pay and which are paid or  
26 payable by the member, and shall not include claim expenses. An

1 expenses. An ultimate loss is incurred by the association on the  
2 date which the loss occurs.

3 (3) An insurer may withdraw from the association only upon  
4 ceasing to write insurance which provides the security required  
5 by section 3101(1) in this state.

6 (4) An insurer whose membership in the association has been  
7 terminated by withdrawal shall continue to be bound by the plan  
8 of operation, and upon withdrawal, all unpaid premiums which have  
9 been charged to the withdrawing member shall be payable as of the  
10 effective date of the withdrawal.

11 (5) An unsatisfied net liability to the association of an  
12 insolvent member shall be assumed by and apportioned among the  
13 remaining members of the association as provided in the plan of  
14 operation. The association shall have all rights allowed by law  
15 on behalf of the remaining members against the estate or funds of  
16 the insolvent member for sums due the association.

17 (6) ~~When~~ IF a member has been merged or consolidated into  
18 another insurer or another insurer has reinsured a member's  
19 entire business which provides the security required by section  
20 3101(1) in this state, the member and successors in interest of  
21 the member shall remain liable for the member's obligations.

22 (7) The association shall do all of the following on behalf  
23 of the members of the association:

24 (a) Assume 100% of all liability as provided in subsection  
25 (2).

26 (b) Establish procedures by which members shall promptly  
27 report to the association each claim which, on the basis of the

1 injuries or damages sustained, may reasonably be anticipated to  
2 involve the association if the member is ultimately held legally  
3 liable for the injuries or damages. Solely for the purpose of  
4 reporting claims, the member shall in all instances consider  
5 itself legally liable for the injuries or damages. The member  
6 shall also advise the association of subsequent developments  
7 likely to materially affect the interest of the association in  
8 the claim.

9 (c) Maintain relevant loss and expense data relative to all  
10 liabilities of the association and require each member to furnish  
11 statistics, in connection with liabilities of the association, at  
12 the times and in the form and detail as may be required by the  
13 plan of operation.

14 (d) In a manner provided for in the plan of operation AND  
15 SUBJECT TO THE PRIOR APPROVAL OF THE COMMISSIONER, calculate and  
16 charge to members of the association a total premium sufficient  
17 to cover the expected losses and expenses of the association  
18 which the association will likely incur during the period for  
19 which the premium is applicable. The premium shall include an  
20 amount to cover incurred but not reported losses for the period  
21 and may be adjusted for any excess or deficient premiums from  
22 previous periods. Excesses or deficiencies from previous periods  
23 may be fully adjusted in a single period or may be adjusted over  
24 several periods in a manner provided for in the plan of  
25 operation. Each member shall be charged an amount equal to that  
26 member's total earned car years of insurance providing the  
27 security required by section 3101(1) or 3103(1), or both, written

1 in this state during the period to which the premium applies,  
2 multiplied by the average premium per car. The average premium  
3 per car shall be the total premium calculated divided by the  
4 total earned car years of insurance providing the security  
5 required by section 3101(1) or 3103(1) written in this state of  
6 all members during the period to which the premium applies. As  
7 used in this subdivision, "car" includes a motorcycle.

8 (e) Require and accept the payment of premiums from members  
9 of the association as provided for in the plan of operation. The  
10 association shall do either of the following:

11 (i) Require payment of the premium in full within 45 days  
12 after the premium charge.

13 (ii) Require payment of the premiums to be made periodically  
14 to cover the actual cash obligations of the association.

15 (f) Receive and distribute all sums required by the opera-  
16 tion of the association.

17 (g) Establish procedures for reviewing claims procedures and  
18 practices of members of the association. If the claims proce-  
19 dures or practices of a member are considered inadequate to prop-  
20 erly service the liabilities of the association, the association  
21 may undertake or may contract with another person, including  
22 another member, to adjust or assist in the adjustment of claims  
23 for the member on claims which create a potential liability to  
24 the association and may charge the cost of the adjustment to the  
25 member.

26 (8) In addition to other powers granted to it by this  
27 section, the association may do all of the following:

1 (a) Sue and be sued in the name of the association. A  
2 judgment against the association shall not create any direct  
3 liability against the individual members of the association. The  
4 association may provide for the indemnification of its members,  
5 members of the board of directors of the association, and offi-  
6 cers, employees, and other persons lawfully acting on behalf of  
7 the association.

8 (b) Reinsure all or any portion of its potential liability  
9 with reinsurers licensed to transact insurance in this state or  
10 approved by the commissioner.

11 (c) Provide for appropriate housing, equipment, and person-  
12 nel as may be necessary to assure the efficient operation of the  
13 association.

14 (d) Pursuant to the plan of operation, adopt reasonable  
15 rules for the administration of the association, enforce those  
16 rules, and delegate authority, as the board considers necessary  
17 to assure the proper administration and operation of the associa-  
18 tion consistent with the plan of operation.

19 (e) Contract for goods and services, including independent  
20 claims management, actuarial, investment, and legal services,  
21 from others within or without this state to assure the efficient  
22 operation of the association.

23 (f) Hear and determine complaints of a company or other  
24 interested party concerning the operation of the association.

25 (g) Perform other acts not specifically enumerated in this  
26 section which are necessary or proper to accomplish the purposes

1 of the association and which are not inconsistent with this  
2 section or the plan of operation.

3 (9) A board of directors is created, hereinafter referred to  
4 as the board, which shall be responsible for the operation of the  
5 association consistent with the plan of operation and this  
6 section.

7 (10) The plan of operation shall provide for all of the  
8 following:

9 (a) The establishment of necessary facilities.

10 (b) The management and operation of the association.

11 (c) A preliminary premium, payable by each member in propor-  
12 tion to its total first-year premium, for initial expenses neces-  
13 sary to commence operation of the association.

14 (d) Procedures to be utilized in charging premiums, includ-  
15 ing adjustments from excess or deficient premiums from prior  
16 periods.

17 (e) Procedures governing the actual payment of premiums to  
18 the association.

19 (f) Reimbursement of each member of the board by the associ-  
20 ation for actual and necessary expenses incurred on association  
21 business.

22 (g) The investment policy of the association.

23 (h) Any other matters required by or necessary to effec-  
24 tively implement this section.

25 (11) ~~Not more than 30 days after the effective date of this~~  
26 ~~section, the commissioner shall convene an organizational meeting~~  
27 ~~of the board.~~ The board shall be initially composed of 5 members

1 of the association appointed by the commissioner to serve as  
2 directors, and the commissioner or a designated representative of  
3 the commissioner serving as an ex officio member of the board  
4 without vote. The initial board and each successor board shall  
5 include members which would contribute a total of not less than  
6 40% of the total premium calculated pursuant to subsection  
7 (7)(d). Each director shall be entitled to 1 vote. The initial  
8 term of office of a director shall be 2 years.

9       (12) As part of the plan of operation, the board shall adopt  
10 rules providing for the composition and term of successor boards  
11 to the initial board, consistent with the membership composition  
12 requirements in subsections (11) and (13). Terms of the direc-  
13 tors shall be staggered so that the terms of all the directors do  
14 not expire at the same time and so that a director does not serve  
15 a term of more than 4 years.

16       (13) The board shall consist of 5 directors and the commis-  
17 sioner shall be an ex officio member of the board without vote.

18       (14) Each director shall be appointed by the commissioner  
19 and shall serve until that member's successor is selected and  
20 qualified. The chairperson of the board shall be elected by the  
21 board. A vacancy on the board shall be filled by the commis-  
22 sioner consistent with the plan of operation.

23       (15) After the board is appointed, the board shall meet as  
24 often as the chairperson, the commissioner, or the plan of opera-  
25 tion shall require, or at the request of any 3 members of the  
26 board. The chairperson shall retain the right to vote on all  
27 issues. Four members of the board shall constitute a quorum.



1       (16) An annual report of the operations of the association  
2 in a form and detail as may be determined by the board shall be  
3 furnished to each member.

4       (17) Not more than 60 days after the initial organizational  
5 meeting of the board, the board shall submit to the commissioner  
6 for approval a proposed plan of operation consistent with the  
7 objectives and provisions of this section, which shall provide  
8 for the economical, fair, and nondiscriminatory administration of  
9 the association and for the prompt and efficient provision of  
10 indemnity. If a plan is not submitted within this 60-day period,  
11 then the commissioner, after consultation with the board, shall  
12 formulate and place into effect a plan consistent with this  
13 section.

14       (18) The plan of operation, unless approved sooner in writ-  
15 ing, shall be considered to meet the requirements of this section  
16 if it is not disapproved by written order of the commissioner  
17 within 30 days after the date of its submission. Before disap-  
18 proval of all or any part of the proposed plan of operation, the  
19 commissioner shall notify the board in what respect the plan of  
20 operation fails to meet the requirements and objectives of this  
21 section. If the board fails to submit a revised plan of opera-  
22 tion which meets the requirements and objectives of this section  
23 within the 30-day period, the commissioner shall enter an order  
24 accordingly and shall immediately formulate and place into effect  
25 a plan consistent with the requirements and objectives of this  
26 section.

1 (19) The proposed plan of operation or amendments to the  
2 plan of operation shall be subject to majority approval by the  
3 board, ratified by a majority of the membership having a vote,  
4 with voting rights being apportioned according to the premiums  
5 charged in subsection (7)(d) and shall be subject to approval by  
6 the commissioner.

7 (20) Upon approval by the commissioner and ratification by  
8 the members of the plan submitted, or upon the promulgation of a  
9 plan by the commissioner, each insurer authorized to write insur-  
10 ance providing the security required by section 3101(1) OR  
11 3103(1) in this state, as ~~defined~~ PROVIDED in this section,  
12 shall be bound by and shall formally subscribe to and participate  
13 in the plan approved as a condition of maintaining its authority  
14 to transact insurance in this state.

15 (21) The association shall be subject to all the reporting,  
16 loss reserve, and investment requirements of the commissioner to  
17 the same extent as would a member of the association.

18 (22) Premiums charged members by the association shall be  
19 recognized in the rate-making procedures for insurance rates in  
20 the same manner that expenses and premium taxes are recognized.

21 (23) The commissioner or an authorized representative of the  
22 commissioner may visit the association at any time and examine  
23 any and all the association's affairs.

24 (24) ~~This section shall take effect on July 1, 1978.~~ The  
25 association shall not have liability for losses occurring before  
26 ~~the effective date of this section~~ JULY 1, 1978.