

HOUSE BILL No. 5346

December 11, 1989, Introduced by Reps. Berman, DeMars, Bartnik and Sofio 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 in each loss occurrence. As used in this section,
18 "ultimate loss" means the actual loss amounts which a member is
19 obligated to pay and which are paid or payable by the member, and
20 shall not include claim expenses. An ultimate loss is incurred
21 by the association on the date which the loss occurs.

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

25 (4) An insurer whose membership in the association has been
26 terminated by withdrawal shall continue to be bound by the plan
27 of operation, and upon withdrawal, all unpaid premiums which have

1 been charged to the withdrawing member shall be payable as of the
2 effective date of the withdrawal.

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

9 (6) ~~When~~ IF a member has been merged or consolidated into
10 another insurer or another insurer has reinsured a member's
11 entire business which provides the security required by section
12 3101(1) in this state, the member and successors in interest of
13 the member shall remain liable for the member's obligations.

14 (7) The association shall do all of the following on behalf
15 of the members of the association:

16 (a) Assume 100% of all liability as provided in subsection
17 (2).

18 (b) Establish procedures by which members shall promptly
19 report to the association each claim which, on the basis of the
20 injuries or damages sustained, may reasonably be anticipated to
21 involve the association if the member is ultimately held legally
22 liable for the injuries or damages. Solely for the purpose of
23 reporting claims, the member shall in all instances consider
24 itself legally liable for the injuries or damages. The member
25 shall also advise the association of subsequent developments
26 likely to materially affect the interest of the association in
27 the claim.

1 (c) Maintain relevant loss and expense data relative to all
2 liabilities of the association and require each member to furnish
3 statistics, in connection with liabilities of the association, at
4 the times and in the form and detail as may be required by the
5 plan of operation.

6 (d) In a manner provided for in the plan of operation, cal-
7 culate and charge to members of the association a total premium
8 sufficient to cover the expected losses and expenses of the asso-
9 ciation which the association will likely incur during the period
10 for which the premium is applicable. The premium shall include
11 an amount to cover incurred but not reported losses for the
12 period and may be adjusted for any excess or deficient premiums
13 from previous periods. Excesses or deficiencies from previous
14 periods may be fully adjusted in a single period or may be
15 adjusted over several periods in a manner provided for in the
16 plan of operation. Each member shall be charged an amount equal
17 to that member's total earned car years of insurance providing
18 the security required by section 3101(1) or 3103(1), or both,
19 written in this state during the period to which the premium
20 applies, multiplied by the average premium per car. The average
21 premium per car shall be the total premium calculated divided by
22 the total earned car years of insurance providing the security
23 required by section 3101(1) or 3103(1) written in this state of
24 all members during the period to which the premium applies. As
25 used in this subdivision, "car" includes a motorcycle.

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

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

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

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

10 (g) Establish procedures for reviewing claims procedures and
11 practices of members of the association. If the claims proce-
12 dures or practices of a member are considered inadequate to prop-
13 erly service the liabilities of the association, the association
14 may undertake or may contract with another person, including
15 another member, to adjust or assist in the adjustment of claims
16 for the member on claims which create a potential liability to
17 the association and may charge the cost of the adjustment to the
18 member.

19 (8) In addition to other powers granted to it by this sec-
20 tion, the association may do all of the following:

21 (a) Sue and be sued in the name of the association. A judg-
22 ment against the association shall not create any direct liabil-
23 ity against the individual members of the association. The asso-
24 ciation may provide for the indemnification of its members, mem-
25 bers of the board of directors of the association, and officers,
26 employees, and other persons lawfully acting on behalf of the
27 association.

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

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

7 (d) Pursuant to the plan of operation, adopt reasonable
8 rules for the administration of the association, enforce those
9 rules, and delegate authority, as the board considers necessary
10 to assure the proper administration and operation of the associa-
11 tion consistent with the plan of operation.

12 (e) Contract for goods and services, including independent
13 claims management, actuarial, investment, and legal services,
14 from others within or without this state to assure the efficient
15 operation of the association.

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

18 (g) Perform other acts not specifically enumerated in this
19 section which are necessary or proper to accomplish the purposes
20 of the association and which are not inconsistent with this sec-
21 tion or the plan of operation.

22 (9) A board of directors is created, hereinafter referred to
23 as the board, which shall be responsible for the operation of the
24 association consistent with the plan of operation and this
25 section.

26 (10) The plan of operation shall provide for all of the
27 following:

1 (a) The establishment of necessary facilities.

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

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

6 (d) Procedures to be utilized in charging premiums, includ-
7 ing adjustments from excess or deficient premiums from prior
8 periods.

9 (e) Procedures governing the actual payment of premiums to
10 the association.

11 (f) Reimbursement of each member of the board by the associ-
12 ation for actual and necessary expenses incurred on association
13 business.

14 (g) The investment policy of the association.

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

17 (11) ~~Not more than 30 days after the effective date of this~~
18 ~~section, the commissioner shall convene an organizational meeting~~
19 ~~of the board.~~ The board shall be initially composed of 5 members
20 of the association appointed by the commissioner to serve as
21 directors, and the commissioner or a designated representative of
22 the commissioner serving as an ex officio member of the board
23 without vote. The initial board and each successor board shall
24 include members which would contribute a total of not less than
25 40% of the total premium calculated pursuant to subsection
26 (7)(d). Each director shall be entitled to 1 vote. The initial
27 term of office of a director shall be 2 years.

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

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

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

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

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

23 (17) Not more than 60 days after the initial organizational
24 meeting of the board, the board shall submit to the commissioner
25 for approval a proposed plan of operation consistent with the
26 objectives and provisions of this section, which shall provide
27 for the economical, fair, and nondiscriminatory administration of

1 the association and ~~for the prompt and efficient~~ SHALL PROVIDE
2 FOR THE provision of indemnity WITHIN 30 DAYS AFTER REASONABLE
3 PROOF OF AN ULTIMATE LOSS IS SUBMITTED TO THE ASSOCIATION BY A
4 MEMBER. If a plan is not submitted within this 60-day period,
5 then the commissioner, after consultation with the board, shall
6 formulate and place into effect a plan consistent with this
7 section.

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

21 (19) The proposed plan of operation or amendments to the
22 plan of operation shall be subject to majority approval by the
23 board, ratified by a majority of the membership having a vote,
24 with voting rights being apportioned according to the premiums
25 charged in subsection (7)(d) and shall be subject to approval by
26 the commissioner.

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

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

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

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

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