

HOUSE BILL No. 5317

November 30, 1989, Introduced by Reps. Wartner, Hoekman, Weeks, Runco, Bartnik, Law, Maynard, Sikkema, London, Sparks, Trim, Hillegonds, Bandstra, Fitzgerald, Bryant, Emmons, Strand, Pridnia, Middaugh, Gnodtke, Stacey, Crandall, Oxender, Randall, Bankes, DeLange, Van Regenmorter, Bender, Giese, Ouwinga, Jaye, Bennett, Spaniola, Hoffman, Dolan, Gilmer, Johnson and Nye and referred to the Committee on Insurance.

A bill to amend the title and sections 2103, 2111, 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3101, 3104, 3107, 3109, 3109a, 3113, 3116, 3135, 3142, 3315, 6101, 6103, 6105, 6107, and 6110 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

section 2103 as amended by Act No. 461 of the Public Acts of 1980, section 2111 as amended by Act No. 150 of the Public Acts of 1987, sections 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3315, 6101, 6103, 6105, 6107, and 6110 as added by Act No. 10 of the Public Acts of 1986, section 3101 as amended by Act No. 126 of the Public Acts of 1988, section 3104 as amended by Act No. 445 of the Public Acts of 1980, section 3107 as amended by Act No. 312 of the Public Acts of 1988, and section 3113 as amended by Act No. 93 of the Public Acts of 1986, being sections

500.2103, 500.2111, 500.2111a, 500.2111b, 500.2111c, 500.2134, 500.2136, 500.2138, 500.3015, 500.3101, 500.3104, 500.3107, 500.3109, 500.3109a, 500.3113, 500.3116, 500.3135, 500.3142, 500.3315, 500.6101, 500.6103, 500.6105, 500.6107, and 500.6110 of the Michigan Compiled Laws; to add section 2111d; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2103, 2111, 2111a, 2111b,
2 2111c, 2134, 2136, 2138, 3015, 3101, 3104, 3107, 3109, 3109a,
3 3113, 3116, 3135, 3142, 3315, 6101, 6103, 6105, 6107, and 6110 of
4 Act No. 218 of the Public Acts of 1956, section 2103 as amended
5 by Act No. 461 of the Public Acts of 1980, section 2111 as
6 amended by Act No. 150 of the Public Acts of 1987, sections
7 2111a, 2111b, 2111c, 2134, 2136, 2138, 3015, 3315, 6101, 6103,
8 6105, 6107, and 6110 as added by Act No. 10 of the Public Acts of
9 1986, section 3101 as amended by Act No. 126 of the Public Acts
10 of 1988, section 3104 as amended by Act No. 445 of the Public
11 Acts of 1980, section 3107 as amended by Act No. 312 of the
12 Public Acts of 1988, and section 3113 as amended by Act No. 93 of
13 the Public Acts of 1986, being sections 500.2103, 500.2111,
14 500.2111a, 500.2111b, 500.2111c, 500.2134, 500.2136, 500.2138,
15 500.3015, 500.3101, 500.3104, 500.3107, 500.3109, 500.3109a,
16 500.3113, 500.3116, 500.3135, 500.3142, 500.3315, 500.6101,
17 500.6103, 500.6105, 500.6107, and 500.6110 of the Michigan
18 Compiled Laws, are amended and section 2111d is added to read as
19 follows:

TITLE

1
2 An act to revise, consolidate, and classify the laws relat-
3 ing to the insurance and surety business; to regulate the incor-
4 poration or formation of domestic insurance and surety companies
5 and associations and the admission of foreign and alien companies
6 and associations; to provide their rights, powers, and immunities
7 and to prescribe the conditions on which companies and associa-
8 tions organized, existing, or authorized under this act may exer-
9 cise their powers; to provide the rights, powers, and immunities
10 and to prescribe the conditions on which other persons, firms,
11 corporations, associations, risk retention groups, and purchasing
12 groups engaged in an insurance or surety business may exercise
13 their powers; to provide for the imposition of a privilege fee on
14 domestic insurance companies and associations and the state acci-
15 dent fund; to provide for the imposition of a tax on the business
16 of foreign and alien companies and associations; to provide for
17 the imposition of a tax on risk retention groups and purchasing
18 groups; to provide for the imposition of a tax on the business of
19 surplus line agents; to modify tort liability arising out of cer-
20 tain accidents; to provide for limited actions with respect to
21 that modified tort liability, and to prescribe certain procedures
22 for maintaining those actions; to require security for losses
23 arising out of certain accidents; to provide for the continued
24 availability and affordability of automobile insurance and home-
25 owners insurance in this state, and to facilitate the purchase of
26 that insurance by all residents of this state at fair and
27 reasonable rates; to provide for certain reporting with respect

1 to insurance, and with respect to certain claims against
2 uninsured or self-insured persons; and to prescribe duties for
3 certain state departments and officers with respect to that
4 reporting; to provide for certain assessments; to establish and
5 continue certain state insurance funds; to modify and clarify the
6 status, rights, powers, duties, and operations of the nonprofit
7 malpractice insurance fund; to provide for the departmental
8 supervision and regulation of the insurance and surety business
9 within this state; to provide for the conservation, rehabilita-
10 tion, or liquidation of unsound or insolvent insurers; to provide
11 for the protection of policyholders, claimants, and creditors of
12 unsound or insolvent insurers; to provide for associations of
13 insurers to protect policyholders and claimants in the event of
14 insurer insolvencies; to prescribe educational requirements for
15 insurance agents and solicitors; to provide for the regulation of
16 multiple employer welfare arrangements; to create an automobile
17 theft AND DRUNK DRIVING prevention authority; ~~to reduce the~~
18 ~~number of automobile thefts in this state;~~ to prescribe the
19 powers and duties of the automobile theft AND DRUNK DRIVING pre-
20 vention authority; to provide certain powers and duties upon cer-
21 tain officials, departments, and authorities of this state; to
22 repeal certain acts and parts of acts; to repeal certain acts and
23 parts of acts on specific dates; and to provide penalties for the
24 violation of this act.

25 Sec. 2103. (1) "Eligible person", for automobile insurance,
26 means a person who is an owner or registrant of an automobile
27 registered or to be registered in this state or who holds a valid

1 Michigan license to operate a motor vehicle, but does not include
2 any of the following:

3 (a) A person who is not required to maintain security pursu-
4 ant to section 3101, unless the person intends to reside in this
5 state for 30 days or more and makes a written statement of that
6 intention on a form approved by the commissioner.

7 (b) A person whose license to operate a vehicle is under
8 suspension or revocation.

9 (c) A person who has been convicted within the immediately
10 preceding 5-year period of fraud or intent to defraud involving
11 an insurance claim or an application for insurance; or an indi-
12 vidual who has been successfully denied, within the immediately
13 preceding 5-year period, payment by an insurer of a claim in
14 excess of \$1,000.00 under an automobile insurance policy, where
15 there is evidence of fraud or intent to defraud involving an
16 insurance claim or application.

17 (d) A person who, during the immediately preceding 3-year
18 period, has been convicted under, or who has been subject to an
19 order of disposition of the probate court for a violation of, any
20 of the following:

21 (i) Section 324 ~~or 325~~ of THE MICHIGAN PENAL CODE, Act
22 No. 328 of the Public Acts of 1931, as amended, being ~~sections~~
23 SECTION 750.324 ~~and 750.325~~ of the Michigan Compiled Laws; sec-
24 tion 1 of Act No. 214 of the Public Acts of 1931, being section
25 752.191 of the Michigan Compiled Laws; or under any other law of
26 this state the violation of which constitutes a felony resulting
27 from the operation of a motor vehicle.

1 (ii) Section 625 of THE MICHIGAN VEHICLE CODE, Act No. 300
2 of the Public Acts of 1949, as amended, being section 257.625 of
3 the Michigan Compiled Laws.

4 (iii) Section 617, 617a, 618, or 619 of Act No. 300 of the
5 Public Acts of 1949, as amended, being sections 257.617,
6 257.617a, 257.618, and 257.619 of the Michigan Compiled Laws.

7 (iv) Section 626 of Act No. 300 of the Public Acts of 1949,
8 as amended, being section 257.626 of the Michigan Compiled Laws;
9 or for a similar violation under the laws of any other state or a
10 municipality within or without this state.

11 (v) Section 625b of Act No. 300 of the Public Acts of 1949,
12 as amended, being section 257.625b of the Michigan Compiled
13 Laws.

14 (vi) SECTION 626A OF ACT NO. 300 OF THE PUBLIC ACTS OF 1949,
15 BEING SECTION 257.626A OF THE MICHIGAN COMPILED LAWS.

16 (e) A person whose vehicle insured or to be insured under
17 the policy fails to meet the motor vehicle safety requirements of
18 sections 683 to 711 of Act No. 300 of the Public Acts of 1949, as
19 amended, being sections 257.683 to 257.711 of the Michigan
20 Compiled Laws.

21 (f) A person whose policy of automobile insurance has been
22 canceled because of nonpayment of premium or financed premium
23 within the immediately preceding 2-year period, unless the pre-
24 mium due on a policy for which application has been made is paid
25 in full before issuance or renewal of the policy.

26 (g) A person who fails to obtain or maintain membership in a
27-club, group, or organization, if membership is a uniform

1 requirement of the insurer as a condition of providing insurance,
 2 and if the dues, charges, or other conditions for membership are
 3 applied uniformly throughout this state, are not expressed as a
 4 percentage of premium, and do not vary with respect to the rating
 5 classification of the member except for the purpose of offering a
 6 membership fee to family units. Membership fees may vary in
 7 accordance with the amount or type of coverage if the ~~purchase~~
 8 PURCHASE of additional coverage, either as to type or amount, is
 9 not a condition for reduction of dues or fees.

10 (h) A person whose driving record for the 3-year period
 11 immediately preceding application for or renewal of a policy,
 12 has, pursuant to section 2119a, an accumulation of more than ~~the~~
 13 ~~following: (i) Five insurance eligibility points, if the appli-~~
 14 ~~cation or renewal occurs on or before December 31, 1982. (ii)~~
 15 ~~Six 6 insurance eligibility points. , if the application or~~
 16 ~~renewal occurs on or after January 1, 1983.~~

17 (2) "Eligible person", for home insurance, means a person
 18 who is the owner-occupant or tenant of a dwelling of any of the
 19 following types: a house, a condominium unit, a cooperative
 20 unit, a room, or an apartment; or a person who is the
 21 owner-occupant of a multiple unit dwelling of not more than 4
 22 residential units. Eligible person does not include any of the
 23 following:

24 (a) A person who has been convicted, in the immediately pre-
 25 ceding 5-year period, of 1 or more of the following:

26 (i) Arson, or conspiracy to commit arson.

1 (ii) A crime under sections 72 to 77, 112, 211a, 377a, 377b,
2 or 380 of Act No. 328 of the Public Acts of 1931, as amended,
3 being sections 750.72 to 750.77, 750.112, 750.211a, 750.377a,
4 750.377b, and 750.380 of the Michigan Compiled Laws.

5 (iii) A crime under section 92, 151, 157b, or 218 of Act
6 No. 328 of the Public Acts of 1931, as amended, being sections
7 750.92, 750.151, 750.157b, and 750.218 of the Michigan Compiled
8 Laws, based upon a crime described in subparagraph (ii) committed
9 by or on behalf of the person.

10 (b) A person who has been successfully denied, within the
11 immediately preceding 5-year period, payment by an insurer of a
12 claim under a home insurance policy in excess of \$2,000.00, based
13 on evidence of arson, conspiracy to commit arson, misrepresenta-
14 tion, fraud, or ~~conspiracy~~ CONSPIRACY to commit fraud, commit-
15 ted by or on behalf of the person, if the amount of the denied
16 claim was greater than any of the following:

17 (i) For a claim under a repair cost policy, 15% of the
18 amount of insurance in force.

19 (ii) For a claim under a replacement cost policy, 10% of the
20 amount of insurance in force.

21 (c) A person who insures or seeks to insure a dwelling
22 ~~which~~ THAT is being used for an illegal or demonstrably hazard-
23 ous purpose.

24 (d) A person who refuses to purchase an amount of insurance
25 equal to at least 80% of the replacement cost of the property
26 insured or to be insured under a replacement cost policy.

1 (e) A person who refuses to purchase an amount of insurance
2 equal to at least 100% of the market value of the property
3 insured or to be insured under a repair cost policy.

4 (f) A person who refuses to purchase an amount of insurance
5 equal to at least 100% of the actual cash value of the property
6 insured or to be insured under a tenant or renter's home insur-
7 ance policy.

8 (g) A person whose policy of home insurance has been
9 ~~cancelled~~ CANCELED because of nonpayment of premium within the
10 immediately preceding 2-year period, unless the premium due on
11 the policy is paid in full before issuance or renewal of the
12 policy.

13 (h) A person who insures or seeks to insure a dwelling, if
14 the insured value is not any of the following:

15 (i) For a repair cost policy, at least \$7,500.00.

16 (ii) For a replacement policy, at least \$15,000.00 or
17 another amount which the commissioner may establish biennially on
18 and after January 1, 1983, pursuant to rules promulgated by the
19 commissioner under THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act
20 No. 306 of the Public Acts of 1969, as amended, BEING SECTIONS
21 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, based upon
22 changes in applicable construction cost indices.

23 (j) A person who insures or seeks to insure a dwelling
24 ~~which~~ THAT does not meet minimum standards of insurability as
25 established by rules promulgated by the commissioner pursuant to
26 Act No. 306 of the Public Acts of 1969, as amended.

1 (k) A person whose real property taxes with respect to the
2 dwelling insured or to be insured have been and are delinquent
3 for 2 or more years at the time of renewal of, or application
4 for, home insurance.

5 (l) A person who has failed to procure or maintain member-
6 ship in a club, group, or organization, if membership is a uni-
7 form requirement of the insurer, and if the dues, charges, or
8 other conditions for membership are applied uniformly throughout
9 this state, are not expressed as a percentage of premium, and do
10 not vary with respect to the rating classification of the member
11 except for the purpose of offering a membership fee to family
12 units. Membership fees may vary in accordance with the amount or
13 type of coverage if the purchase of additional coverage, either
14 as to type or amount, is not a condition for reduction of dues or
15 fees.

16 (3) "Home insurance" means any of the following, but does
17 not include insurance intended to insure commercial, industrial,
18 professional, or business property, obligations, or liabilities:

19 (a) Insurance for an insured's dwelling of a type described
20 in subsection (2), provided by a Michigan standard policy as
21 described in section 2832.

22 (b) ~~When~~ IF contained in or indorsed to a Michigan stan-
23 dard policy providing insurance for the insured's residence,
24 other insurance intended primarily to insure nonbusiness proper-
25 ty, obligations, and liabilities.

26 (c) Other insurance coverages for an insured's residence as
27 prescribed by rule promulgated by the commissioner pursuant to

1 Act No. 306 of the Public Acts of 1969, as amended. A rule
2 proposed for promulgation by the commissioner pursuant to this
3 section shall be transmitted in advance to each member of the
4 standing committee in the house and in the senate which has
5 jurisdiction over insurance.

6 (4) "Insurance eligibility points" means all of the
7 following:

8 (a) Points calculated, according to the following schedule,
9 for convictions, determinations of responsibility for civil
10 infractions, or findings of responsibility in probate court:

11 (i) For a violation of ~~any~~ A lawful speed limit by more
12 than 15 miles per hour, or careless driving, 4 points.

13 (ii) For a violation of ~~any~~ A lawful speed limit by more
14 than 10 miles per hour, but less than 16 miles per hour, 3
15 points.

16 (iii) For a violation of ~~any~~ A lawful speed limit by 10
17 miles per hour or less, 2 points.

18 (iv) For a violation of ~~any~~ A speed limit by 15 miles per
19 hour or less on a roadway which had a lawfully posted maximum
20 speed of 70 miles per hour as of January 1, 1974, 2 points.

21 (v) For all other moving violations pertaining to the opera-
22 tion of motor vehicles, 2 points.

23 (b) Points calculated, according to the following schedule,
24 for determinations that the person was substantially at-fault, as
25 defined in section 2104(4):

1 (i) For the first substantially at-fault accident, 3
2 points. AN INSURER MAY ELECT NOT TO AWARD POINTS FOR AN
3 INSURED'S FIRST SUBSTANTIALLY AT-FAULT ACCIDENT.

4 (ii) For the second and each subsequent substantially
5 at-fault accident, 4 points.

6 (5) "Insurer" means an insurer authorized to transact in
7 this state the kind or combination of kinds of insurance consti-
8 tuting automobile insurance or home insurance, as defined in this
9 chapter.

10 Sec. 2111. (1) Notwithstanding any provision of this ~~code~~
11 ACT and this chapter to the contrary, classifications and terri-
12 torial base rates used by any insurer in this state with respect
13 to automobile insurance or home insurance shall conform to the
14 applicable requirements of this section.

15 (2) Classifications established pursuant to this section for
16 automobile insurance shall be based only upon 1 or more of the
17 following factors, which shall be applied by an insurer on a uni-
18 form basis throughout the state:

19 (a) With respect to all automobile insurance coverages:

20 (i) Either the age of THE driver; the length of driving
21 experience; or the number of years licensed to operate a motor
22 vehicle.

23 (ii) Driver primacy, based upon the proportionate use of
24 each vehicle insured under the policy by individual drivers
25 insured or to be insured under the policy.

26 (iii) Average miles driven weekly, annually, or both.

1 (iv) Type of use, such as business, farm, or pleasure use.

2 (v) Vehicle characteristics, features, and options, such as
3 engine displacement, ability of vehicle and its equipment to pro-
4 tect passengers from injury; and other similar items, including
5 vehicle make and model.

6 (vi) Daily or weekly commuting mileage.

7 (vii) Number of cars insured by the insurer or number of
8 licensed operators in the household. However, number of licensed
9 operators shall not be used as an indirect measure of marital
10 status.

11 (viii) Amount of insurance.

12 (b) In addition to the factors prescribed in subdivision
13 (a), with respect to personal protection insurance coverage:

14 (i) Earned income.

15 (ii) Number of dependents of income earners insured under
16 the policy.

17 (iii) Coordination of benefits.

18 (iv) Use of a safety belt.

19 (c) In addition to the factors prescribed in subdivision
20 (a), with respect to collision and comprehensive coverages:

21 (i) The anticipated cost of vehicle repairs or replacement,
22 which may be measured by age, price, cost new, or value of the
23 insured automobile, and other factors directly relating to that
24 anticipated cost.

25 (ii) Vehicle make and model.

26 (iii) Vehicle design characteristics related to vehicle
27 damageability.

1 (iv) Vehicle characteristics relating to automobile theft
2 prevention devices.

3 (d) With respect to all automobile insurance coverage other
4 than comprehensive, successful completion by the individual
5 driver or drivers insured under the policy of an accident preven-
6 tion education course which meets the following criteria: —

7 (i) The course shall include a minimum of 8 hours of class-
8 room instruction.

9 (ii) The course shall include, but not be limited to, a
10 review of all of the following:

11 (A) The effects of aging on driving behavior.

12 (B) The shapes, colors, and types of road signs.

13 (C) The effects of alcohol and medication on driving.

14 (D) The laws relating to the proper use of a motor vehicle.

15 (E) Accident prevention measures.

16 (F) The benefits of safety belts and child restraints.

17 (G) Major driving hazards.

18 (H) Interaction with other highway users such as motorcy-
19 clists, bicyclists, and pedestrians.

20 (3) ~~Before February 1, 1987, each~~ EACH insurer shall
21 establish and maintain premium discount plans pursuant to the
22 following:

23 (a) An automobile theft prevention premium discount plan. A
24 premium discount plan required under this subdivision shall pro-
25 vide for a premium discount for automobile comprehensive coverage
26 based upon the installation of an approved automobile theft
27 prevention device. As used in this subdivision, "approved

1 automobile theft prevention device" means a device ~~which~~ THAT
 2 is designed to prevent the theft of an insured's automobile and
 3 ~~which~~ THAT is approved by the board of directors of the automo-
 4 bile theft prevention authority.

5 (b) An automobile safety belt premium discount plan. A pre-
 6 mium discount plan required under this subdivision shall provide
 7 for a premium discount for automobile personal protection insur-
 8 ance of not less than 20%. A premium discount plan established
 9 pursuant to this subdivision may require the insured individual
 10 to certify in writing that he or she will wear a safety belt
 11 while operating the insured motor vehicle in compliance with sec-
 12 tion 710e of the Michigan vehicle code, Act No. 300 of the Public
 13 Acts of 1949, being section 257.710e of the Michigan Compiled
 14 Laws, as a condition to receiving the premium discount. If an
 15 insured receives a premium discount after providing such certifi-
 16 cation and is injured while operating a motor vehicle without
 17 wearing a safety belt at the time of the injury, an insurer may
 18 subsequently deny to such insured the right to participate in any
 19 premium discount plan established by the insurer pursuant to this
 20 subdivision for a period of 12 months. An insurer ~~which~~ THAT
 21 reduces its personal protection insurance rates after December 1,
 22 1985 by not less than 20% and does not increase such rates for a
 23 period of 12 months shall be considered to be in compliance with
 24 this subdivision.

25 ~~(c) This subsection shall not apply on and after July 1,~~
 26 ~~1991.~~

1 (4) Each insurer shall establish a secondary or merit rating
2 plan for automobile insurance. A secondary or merit rating plan
3 required under this subsection shall provide for premium sur-
4 charges for any or all coverages for automobile insurance, based
5 upon any or all of the following, when that information becomes
6 available to the insurer:

7 (a) Substantially at-fault accidents, EXCEPT FOR THE FIRST
8 SUBSTANTIALLY AT-FAULT ACCIDENT IF THE INSURER ELECTS NOT TO
9 AWARD POINTS FOR THAT ACCIDENT AS PROVIDED IN
10 SECTION 2103(4)(B)(i).

11 (b) Convictions for, determinations of responsibility for
12 civil infractions for, or findings of responsibility in probate
13 court for civil infractions for, violations under chapter VI of
14 the Michigan vehicle code, Act No. 300 of the Public Acts of
15 1949, as amended, being sections 257.601 to 257.750 of the
16 Michigan Compiled Laws.

17 (5) An insurer shall not establish or maintain rates or
18 rating classifications for automobile insurance based upon sex or
19 marital status.

20 (6) Notwithstanding other provisions of this chapter, auto-
21 mobile insurance risks shall be grouped by territory, and terri-
22 torial base rates for coverages shall be established as provided
23 in section 2111a and as follows:

24 (a) An insurer shall not be limited as to the number of ter-
25 ritories employed in its rating plan.

26 ~~(b) An insurer shall not employ more than 20 different~~
27 ~~territorial base rates for an automobile insurance coverage.~~

~~1 This subdivision shall not apply from February 28, 1986 to~~
~~2 June 30, 1991.~~

3 (B) ~~(c)~~ A territorial base rate may be made applicable in
4 1 or more territories contained in the rating plan of the
5 insurer.

6 ~~(d) An insurer shall not employ a territorial base rate for~~
7 ~~an automobile insurance package policy that is less than 45% of~~
8 ~~the highest territorial base rate for the same policy, all other~~
9 ~~rating classifications being the same. This subdivision shall~~
10 ~~not apply from February 28, 1986 to June 30, 1991.~~

11 ~~(e) An insurer shall not employ a territorial base rate in a~~
12 ~~territory for an automobile insurance package policy that is less~~
13 ~~than 90% of the territorial base rate employed in any adjacent~~
14 ~~territory for the same policy, all other rating classifications~~
15 ~~being the same. This subdivision shall not apply from February~~
16 ~~28, 1986 to June 30, 1991.~~

17 ~~(7) An insurer may elect at any time to exempt itself from~~
18 ~~the requirements of subsection (6) by filing for an exemption~~
19 ~~with the commissioner. An insurer electing this exemption shall~~
20 ~~initially file a rating plan in which no territorial base rate~~
21 ~~for an automobile insurance package policy is less than 45% of~~
22 ~~the highest territorial base rate for the same policy, all other~~
23 ~~rating classifications being the same. Five years from the date~~
24 ~~of the initial filing the insurer shall be prohibited from using~~
25 ~~a rating plan in which any territorial base rate for an automo-~~
26 ~~bile insurance package policy will be less than 67% of the~~
27 ~~highest territorial base rate for that same policy, all other~~

~~1 rating classifications being the same. An insurer's election of
2 an exemption under this subsection is permanent, final, and not
3 subject to change. This subsection shall not apply from February
4 28, 1986 to June 30, 1991.~~

~~5 (8) Beginning 1 year after the effective date of this sec-
6 tion, if an insurer can demonstrate to the commissioner, after an
7 opportunity for an evidentiary hearing held pursuant to the
8 administrative procedures act of 1969, Act No. 306 of the Public
9 Acts of 1969, as amended, being sections 24.201 to 24.328 of the
10 Michigan Compiled Laws, that clear and significant financial
11 impairment exists in the geographic territory or territories in
12 question because of the need for an additional territorial base
13 rate, or for a greater variance in the adjacent geographic terri-
14 tory differential contained in subsection (6)(e), the additional
15 territorial base rate, a greater variance, or both, shall be per-
16 mitted for use by the insurer or a licensed rating organization
17 on behalf of that insurer, at such time as the need exists.
18 Evidence shall not include financial impairment resulting from
19 exemptions granted to other insurers. This subsection shall not
20 apply from February 28, 1986 to June 30, 1991.~~

~~21 (9) If the commissioner finds, solely on the evidence
22 presented, that a greater variance in the adjacent geographic
23 territory differential than that authorized under subsection
24 (6)(e) is justified, the increase in variance shall not exceed
25 100% of that authorized under that subsection. If an increase in
26 variance in the adjacent geographic territory differential
27 greater than 100% of that authorized under subsection (6)(e) is~~

1 ~~justified, the commissioner shall require the creation of an~~
2 ~~additional territorial base rate. This subsection shall not~~
3 ~~apply from February 28, 1986 to June 30, 1991.~~

4 ~~(10) An exemption granted under subsections (8) and (9)~~
5 ~~shall be applicable only to the geographic territory or territo-~~
6 ~~ries in question, and only to the insurer requesting the~~
7 ~~exemption. This subsection shall not apply from February 28,~~
8 ~~1986 to June 30, 1991.~~

9 ~~(11) An insurer shall not have more than 5 exemptions in~~
10 ~~force at any time. For purposes of determining the number of~~
11 ~~existing exemptions, each additional territorial base rate or~~
12 ~~each increase in variance in the adjacent geographic territory~~
13 ~~differential granted, shall be considered to be a separate~~
14 ~~exemption. This subsection shall not apply from February 28,~~
15 ~~1986 to June 30, 1991.~~

16 (7) ~~(12)~~ This section shall not be construed as limiting
17 insurers or rating organizations from establishing and maintain-
18 ing statistical reporting territories. This section shall not be
19 construed to prohibit an insurer from establishing or maintain-
20 ing, for automobile insurance, a premium discount plan for senior
21 citizens in this state who are 65 years of age or older, if the
22 plan is uniformly applied by the insurer throughout this state.
23 If an insurer has not established and maintained such a premium
24 discount plan for senior citizens, the insurer shall offer
25 reduced premium rates to senior citizens in this state who are 65
26 years of age or older and who drive less than 3,000 miles per
27 year, regardless of statistical data.

1 (8) ~~(+3)~~ Classifications established pursuant to this
2 section for home insurance other than inland marine insurance
3 provided by policy floaters or endorsements shall be based only
4 upon 1 or more of the following factors:

5 (a) Amount and types of coverage.

6 (b) Security and safety devices, including locks, smoke
7 detectors, and similar, related devices.

8 (c) Repairable structural defects reasonably related to
9 risk.

10 (d) Fire protection class.

11 (e) Construction of structure, based on structure size,
12 building material components, and number of units.

13 (f) Loss experience of the insured, based upon prior claims
14 attributable to factors under the control of the insured ~~which~~
15 THAT have been paid by an insurer.

16 (g) Use of smoking materials within the structure.

17 (h) Distance of the structure from a fire hydrant.

18 (i) Availability of law enforcement or crime prevention
19 services.

20 (9) ~~(+4)~~ Notwithstanding other provisions of this chapter,
21 home insurance risks shall be grouped by territory, and territo-
22 rial base rates for coverages shall be established as follows:

23 (a) An insurer shall not be limited as to the number of ter-
24 ritories employed in its rating plan. However, an insurer shall
25 not employ more than 3 different territorial base rates for a
26 home insurance coverage. A territorial base rate may be made

1 applicable in 1 or more territories contained in the rating plan
2 of the insurer.

3 (b) An insurer shall not employ a territorial base rate for
4 home insurance for owner-occupied dwelling policies that is less
5 than 70% of the highest territorial base rate for the same
6 policy, all other rating classifications being the same.

7 (c) An insurer shall not employ a territorial base rate for
8 home insurance for renter or tenant policies that is less than
9 65% of the highest territorial base rate for the same policy, all
10 other rating classifications being the same.

11 (10) ~~(15) An insurer shall not utilize factors other than~~
12 ~~those prescribed in this section in establishing classifications~~
13 ~~for automobile insurance and home insurance until January 1,~~
14 ~~1982. However, on and after January 1, 1982, an~~ AN insurer may
15 utilize factors in addition to those specified in this section,
16 if the commissioner finds, after a hearing held pursuant to the
17 administrative procedures act of 1969, Act No. 306 of the Public
18 Acts of 1969, as amended, being sections 24.201 to 24.328 of the
19 Michigan Compiled Laws, that the factors would encourage innova-
20 tion, would encourage insureds to minimize the risks of loss from
21 hazards insured against, and would be consistent with the pur-
22 poses of this chapter.

23 Sec. 2111a. (1) Except as otherwise provided in this sec-
24 tion, before April 1, 1986, an insurer shall not charge a terri-
25 torial base rate for an automobile insurance package policy in a
26 territory within an urban area which exceeds the territorial base
27 rate ~~which~~ THAT would have been charged by the Michigan

1 automobile insurance placement facility in that territory using
2 the weighted average of the base rates charged in each facility
3 territory by the 5 largest insurer groups, determined by volun-
4 tary net direct automobile insurance car years written in the
5 state for the calendar year ending December 31, 1984 as reported
6 to the statistical agent, and based upon the data used by the
7 facility to determine the facility rates ~~which~~ THAT were effec-
8 tive January 1, 1986. However, this subsection does not require
9 an insurer to reduce its territorial base rates within an urban
10 area ~~which~~ THAT are in effect on ~~the effective date of this~~
11 ~~section~~ FEBRUARY 28, 1986.

12 (2) On and after April 1, 1986, except as otherwise provided
13 in subsection (3), an insurer shall not increase in any 12-month
14 period the rates for automobile insurance package policies in
15 territories within an urban area by an amount ~~which~~ THAT is
16 greater than 4% plus the consumer price index. The insurer may
17 redefine rating territories for automobile insurance package pol-
18 icies in an urban area; however, such redefinition, at the time
19 of the redefinition, shall not result in a weighted average rate
20 in the urban area which is greater than the weighted average rate
21 in the urban area without redefinition of the territories. The
22 insurer shall not use more than 6 territories within an urban
23 area. The sum of the percentage increases for an insurer in a
24 12-month period as permitted under this subsection shall be less
25 than or equal to 4% plus the consumer price index and each per-
26 centage increase shall be computed in accordance with the
27 following:

1 The difference between the total written premium at the
2 proposed rates minus the total written premium at cur-
3 rent rates, divided by total written premium at current
4 rates, and multiplied by 100.

5 (3) On and after February 1, 1988, an insurer may elect to
6 be subject to the limitations provided in this subsection instead
7 of the limitations provided in subsection (2). An insurer elect-
8 ing to be subject to this subsection shall not increase the rates
9 for automobile insurance package policies in territories within
10 an urban area by a percentage ~~which~~ THAT is greater than the
11 insurer's nonurban average percentage increase, which nonurban
12 average percentage increase shall be reduced by the sum of the
13 percentage increases made by the insurer under subsection (2)
14 during the 12 months immediately preceding the date of the filing
15 of the proposed increase pursuant to this subsection. The
16 insurer may redefine rating territories for automobile insurance
17 package policies in an urban area; however, such redefinition, at
18 the time of the redefinition, shall not result in a weighted
19 average rate in the urban area ~~which~~ THAT is greater than the
20 weighted average rate in the urban area without redefinition of
21 the territories. The insurer shall not use more than 6 territo-
22 ries within an urban area. An insurer ~~which~~ THAT elects to be
23 subject to the limitation under this subsection shall remain
24 subject to this subsection.

25 (4) Any rate filing for automobile insurance package
26 policies made after December 15, 1985 shall not be modified,

1 changed, or altered for a period of 6 months after the effective
2 date of such filing. This subsection shall not prohibit an
3 insurer from making rate filings at any time that only provide
4 changes to rates based upon assessments levied against insurers
5 pursuant to section 3104 or 3330. Such rate filings shall not be
6 considered rate filings for purposes of this subsection.

7 (5) As used in this section:

8 (a) "Consumer price index" means the annual average percent-
9 tage increase in the Detroit consumer price index for all items
10 for the prior 12-month period as reported by the United States
11 department of labor and as certified by the commissioner.

12 (b) "Nonurban average percentage increase" means the percent-
13 tage increase of an insurer's weighted average rate outside of an
14 urban area, if any, which is obtained by dividing the weighted
15 average of the proposed rates of the insurer outside an urban
16 area by the highest weighted average rate of the insurer outside
17 an urban area on file with the commissioner during the 6 months
18 immediately preceding the date of the filing of the proposed
19 increase, subtracting 1 from this quotient, and multiplying the
20 difference by 100. The weights used in obtaining the weighted
21 averages in this subdivision shall be the written car years of
22 the insurer in each rating territory. If a negative percentage
23 is calculated under this subdivision, there shall be no nonurban
24 average percentage increase under this subdivision.

25 (c) "Urban area" means the area within the boundaries of a
26 city in this state which has a population of 1,000,000 or more as
27 determined by the latest of each succeeding federal decennial

1 census and includes any city located wholly within the boundaries
 2 of a city in this state which has a population of 1,000,000 or
 3 more as determined by the latest of each succeeding federal
 4 decennial census.

5 ~~(6) This section is repealed effective July 1, 1991.~~

6 Sec. 2111b. An insurer shall not utilize a territorial base
 7 rate for automobile insurance package policies for a territory
 8 outside of the boundaries of an urban area ~~which~~ THAT is
 9 greater than the insurer's highest territorial base rate within
 10 an urban area. ~~This section is repealed effective July 1,~~
 11 ~~1991.~~

12 Sec. 2111c. ~~(1) Between January 1, 1987 and October 1,~~
 13 ~~1987,~~ BY JULY 1, 1991 AND BY JULY 1 OF EVERY ODD YEAR AFTER
 14 1991, the commissioner shall prepare a report ~~which~~ THAT
 15 details the theft of automobiles AND DRUNK DRIVING RELATED
 16 ACCIDENTS occurring in this state ~~since February 1, 1986~~ FOR
 17 THE PREVIOUS 2 YEARS and assesses the impact of the thefts AND
 18 DRUNK DRIVING RELATED ACCIDENTS on rates charged for automobile
 19 insurance. The director of the department of state police,
 20 insurers, the state court administrative office, and the automo-
 21 bile theft AND DRUNK DRIVING prevention authority shall cooperate
 22 in the development of the report as requested by the commissioner
 23 and shall make available records and statistics concerning auto-
 24 mobile thefts AND DRUNK DRIVING ARRESTS AND DRUNK DRIVING RELATED
 25 ACCIDENTS, including the number of automobile thefts AND DRUNK
 26 DRIVING ARRESTS AND DRUNK DRIVING RELATED ACCIDENTS, number of
 27 prosecutions and convictions involving automobile thefts AND

1 DRUNK DRIVING, and automobile theft recidivism. The commissioner
 2 shall evaluate the impact automobile theft ~~has~~ AND DRUNK DRIV-
 3 ING HAVE on the citizens of this state and the costs incurred by
 4 the citizens through insurance, police enforcement, prosecution,
 5 and incarceration due to automobile thefts AND DRUNK DRIVING.
 6 ~~By July 1 of every odd year after 1987, the commissioner shall~~
 7 ~~prepare a similar report reviewing the automobile theft data for~~
 8 ~~the previous 2 years.~~ The report required by this subsection
 9 shall be submitted to the legislature and the automobile theft
 10 AND DRUNK DRIVING prevention authority.

11 ~~(2) Between January 1, 1989 and October 1, 1989, the com-~~
 12 ~~missioner shall prepare a report to the legislature which does~~
 13 ~~both of the following:~~

14 ~~(a) Reviews and evaluates the effect of the 1986 amendatory~~
 15 ~~act which added this section on the rating structure for automo-~~
 16 ~~bile insurance in this state.~~

17 ~~(b) Recommends existing or alternative mechanisms or regula-~~
 18 ~~tory schemes to assure that automobile insurance is available at~~
 19 ~~fair and equitable rates.~~

20 ~~(3) This section is repealed effective July 1, 1991.~~

21 SEC. 2111D. BY MARCH 1, 1990, EACH INSURER SHALL REDUCE ITS
 22 PRIVATE PASSENGER NONFLEET AUTOMOBILE INSURANCE BASE RATES IN
 23 EFFECT IN THIS STATE ON OR AFTER OCTOBER 1, 1989 FOR PERSONAL
 24 PROTECTION INSURANCE AND RESIDUAL LIABILITY INSURANCE BY AN
 25 AMOUNT THAT WOULD RESULT IN A COMBINED REDUCTION FOR THOSE COVER-
 26 AGES OF NOT LESS THAN 25%. ASSESSMENTS FOR THE MICHIGAN
 27 CATASTROPHIC CLAIMS ASSOCIATION, PROPERTY CASUALTY CLAIMS

1 ASSOCIATION, AUTOMOBILE THEFT AND DRUNK DRIVING PREVENTION
2 AUTHORITY, AND THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACIL-
3 ITY SHALL NOT BE CONSIDERED IN ACHIEVING THE REDUCTION REQUIRED
4 BY THIS SECTION.

5 Sec. 2134. ~~(1)~~ Each insurer transacting automobile insur-
6 ance in this state shall:

7 (a) Be a paying member of the national automobile theft
8 bureau.

9 (b) Secure from each insured the vehicle identification
10 number for each vehicle insured by the insurer.

11 ~~(2) This section is repealed effective July 1, 1991.~~

12 Sec. 2136. Each insurer, when writing automobile comprehen-
13 sive insurance coverage for a person who was not previously a
14 policyholder with the insurer or when insuring an automobile
15 ~~which~~ THAT was not previously insured by the insurer for a
16 person who was previously a policyholder with the insurer but who
17 has filed a claim with the insurer within the preceding 3 years
18 to recover for the theft of an automobile, shall verify the exis-
19 tence of the automobile being insured. To comply with this sec-
20 tion, an insurer shall either make a personal inspection of the
21 automobile or obtain not less than 2 photographs of the automo-
22 bile ~~which~~ THAT depict the automobile diagonally from the front
23 and rear. This section shall not apply when an agent subject to
24 section 1209(2) transfers a person's automobile comprehensive
25 insurance coverage from an insurer which has authorized the agent
26 to another insurer which has authorized the agent. ~~This section~~
27 ~~is repealed effective July 1, 1991.~~

1 Sec. 2138. An insurer shall not make a claim payment on an
2 automobile insurance policy for a loss arising from the theft of
3 an automobile covered under the policy unless the insured has
4 filed a report of the theft to the state police or the law
5 enforcement agency within whose jurisdiction the theft occurred.
6 ~~This section is repealed effective July 1, 1991.~~

7 Sec. 3015. (1) Each automobile insurance policy delivered
8 or issued for delivery in this state ~~which~~ THAT provides cover-
9 age for the theft of an automobile may include either or both of
10 the following provisions:

11 (a) A provision ~~which~~ THAT imposes a \$500.00 deductible to
12 the theft loss of the automobile if the automobile was unattended
13 when stolen and was stolen while the keys to the automobile were
14 located in the passenger compartment of the automobile. ~~Such~~
15 THIS deductible shall not apply ~~when~~ IF the automobile is the
16 subject of a bailment contract.

17 (b) A provision ~~which~~ THAT reduces the recovery under the
18 policy by 10% for the theft loss of the automobile if the automo-
19 bile was unattended when stolen and was stolen while the keys to
20 the automobile were located in the passenger compartment of the
21 automobile. The reduction under this subdivision shall not apply
22 ~~when~~ IF the automobile is the subject of a bailment contract.

23 (2) If an insurer includes either or both of the provisions
24 provided in subsection (1) in an automobile insurance policy
25 ~~which~~ THAT provides coverage for the theft of an automobile,
26 the insurer shall include the provision or provisions in each
27 automobile insurance policy providing coverage for the theft of

1 an automobile that is thereafter delivered or issued for delivery
2 by the insurer.

3 ~~(3) This section is repealed effective July 1, 1991.~~

4 Sec. 3101. (1) The owner or registrant of a motor vehicle
5 required to be registered in this state shall maintain security
6 for payment of benefits under personal protection insurance,
7 property protection insurance, and residual liability insurance.
8 Security shall only be required to be in effect during the period
9 the motor vehicle is driven or moved upon a highway.
10 Notwithstanding any other provision in this act, an insurer that
11 has issued an automobile insurance policy on a motor vehicle that
12 is not driven or moved upon a highway may allow the insured owner
13 or registrant of the motor vehicle to delete a portion of the
14 coverages under the policy and maintain the comprehensive cover-
15 age portion of the policy in effect.

16 (2) As used in this chapter:

17 (a) "Automobile insurance" means that term as defined in
18 section 2102.

19 (b) "Highway" means that term as defined in section 20 of
20 the Michigan vehicle code, Act No. 300 of the Public Acts of
21 1949, being section 257.20 of the Michigan Compiled Laws.

22 (c) "Motorcycle" means a vehicle REQUIRED TO BE REGISTERED
23 FOR USE ON A PUBLIC HIGHWAY IN THIS STATE having a saddle or seat
24 for the use of the rider, designed FOR OPERATION UPON A PUBLIC
25 HIGHWAY AND to travel on not more than 3 wheels in contact with
26 the ground, ~~which~~ AND THAT is equipped with a motor that
27 exceeds 50 cubic centimeters piston displacement. The wheels on

1 any attachment to the vehicle shall not be considered as wheels
2 in contact with the ground. Motorcycle does not include a moped,
3 as defined in section 32b of the Michigan vehicle code, Act
4 No. 300 of the Public Acts of 1949, being section 257.32b of the
5 Michigan Compiled Laws, OR AN ORV AS DEFINED IN SECTION 1 OF ACT
6 NO. 319 OF THE PUBLIC ACTS OF 1975, BEING SECTION 257.1601 OF THE
7 MICHIGAN COMPILED LAWS.

8 (d) "Motorcycle accident" means a loss involving the owner-
9 ship, operation, maintenance, or use of a motorcycle as a motor-
10 cycle, but not involving the ownership, operation, maintenance,
11 or use of a motor vehicle as a motor vehicle.

12 (e) "Motor vehicle" means a vehicle REQUIRED TO BE REGIS-
13 TERED FOR USE ON A PUBLIC HIGHWAY IN THIS STATE, including a
14 trailer, operated or designed for operation upon a public highway
15 by power other than muscular power which has more than 2 wheels.
16 Motor vehicle does not include a motorcycle or a moped, as
17 defined in section 32b of Act No. 300 of the Public Acts of 1949,
18 being section 257.32b of the Michigan Compiled Laws, OR AN ORV AS
19 DEFINED IN SECTION 1 OF ACT NO. 319 OF THE PUBLIC ACTS OF 1975,
20 BEING SECTION 257.1601 OF THE MICHIGAN COMPILED LAWS. Motor vehi-
21 cle does not include a farm tractor or other implement of hus-
22 bandry which is not subject to the registration requirements of
23 the Michigan vehicle code pursuant to section 216 of the Michigan
24 vehicle code, Act No. 300 of the Public Acts of 1949, being sec-
25 tion 257.216 of the Michigan Compiled Laws.

26 (f) "Motor vehicle accident" means a loss involving the
27 ownership, operation, maintenance, or use of a motor vehicle as a

1 motor vehicle regardless of whether the accident also involves
2 the ownership, operation, maintenance, or use of a motorcycle as
3 a motorcycle.

4 (g) "Owner" means any of the following:

5 (i) A person renting a motor vehicle or having the use
6 thereof, under a lease or otherwise, for a period that is greater
7 than 30 days.

8 (ii) A person who holds the legal title to a vehicle, other
9 than a person engaged in the business of leasing motor vehicles
10 who is the lessor of a motor vehicle pursuant to a lease provid-
11 ing for the use of the motor vehicle by the lessee for a period
12 that is greater than 30 days.

13 (iii) A person who has the immediate right of possession of
14 a motor vehicle under an installment sale contract.

15 (H) "OWNERSHIP, OPERATION, MAINTENANCE, OR USE OF A MOTOR
16 VEHICLE AS A MOTOR VEHICLE" MEANS THAT THE INVOLVEMENT OF THE
17 MOTOR VEHICLE IN THE INJURY WAS DIRECTLY RELATED TO THE TRANSPOR-
18 TATION FUNCTION OF THE MOTOR VEHICLE.

19 (I) ~~(h)~~ "Registrant" does not include a person engaged in
20 the business of leasing motor vehicles who is the lessor of a
21 motor vehicle pursuant to a lease providing for the use of the
22 motor vehicle by the lessee for a period that is greater than 30
23 days.

24 (3) Security may be provided under a policy issued by an
25 insurer duly authorized to transact business in this state
26 ~~which~~ THAT affords insurance for the payment of benefits
27 described in subsection (1). A policy of insurance represented

1 or sold as providing security shall be deemed to provide
2 insurance for the payment of the benefits.

3 (4) Security required by subsection (1) may be provided by
4 any other method approved by the secretary of state as affording
5 security equivalent to that afforded by a policy of insurance, if
6 proof of the security is filed and continuously maintained with
7 the secretary of state throughout the period the motor vehicle is
8 driven or moved upon a highway. The person filing the security
9 has all the obligations and rights of an insurer under this
10 chapter. When the context permits, "insurer" as used in this
11 chapter, includes any person filing the security as provided in
12 this section.

13 Sec. 3104. (1) An unincorporated, nonprofit association to
14 be known as the catastrophic claims association, hereinafter
15 referred to as the association, is created. Each insurer engaged
16 in writing insurance coverages which provide the security
17 required by section 3101(1) within this state, as a condition of
18 its authority to transact insurance in this state, shall be a
19 member of the association and shall be bound by the REVISED plan
20 of operation of the association. Each insurer engaged in writing
21 insurance coverages which provide the security required by sec-
22 tion 3103(1) within this state, as a condition of its authority
23 to transact insurance in this state, shall be considered a member
24 of the association, but only for purposes of assessments under
25 subsection (7)(d). Except as expressly provided in this section,
26 the association shall not be subject to any laws of this state
27 with respect to insurers, but in all other respects the

1 association shall be subject to the laws of this state to the
2 extent that the association would be were it an insurer organized
3 and subsisting under chapter 50 AND SHALL BE CONSIDERED AN
4 INSURER FOR PURPOSES OF OPERATING PURSUANT TO THE PRUDENT PUR-
5 CHASER ACT, ACT NO. 233 OF THE PUBLIC ACTS OF 1984, BEING SEC-
6 TIONS 550.51 TO 550.63 OF THE MICHIGAN COMPILED LAWS.

7 (2) The association shall provide and each member shall
8 accept indemnification for 100% of the amount of ultimate loss
9 sustained under personal protection insurance coverages in excess
10 of \$250,000.00 in each loss occurrence ADJUSTED ANNUALLY IN
11 ACCORDANCE WITH THE CONSUMER PRICE INDEX FOR INSURANCE POLICIES
12 ISSUED PURSUANT TO SECTION 3101. INDEMNIFICATION SHALL BE PRO-
13 VIDED ONLY TO MEMBER INSURERS WITH CERTIFICATES OF AUTHORITY TO
14 TRANSACT INSURANCE IN THIS STATE FOR POLICIES OF PERSONAL PROTEC-
15 TION INSURANCE ISSUED OR DELIVERED IN THIS STATE. As used in
16 this section: ~~-, "ultimate"~~

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

21 (B) "ULTIMATE loss" means the actual loss amounts which a
22 member is obligated to pay and which are paid or payable by the
23 member, and shall not include claim expenses. An ultimate loss
24 is incurred by the association on the date which the loss
25 occurs.

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

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

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

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

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

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

25 (b) Establish procedures by which members shall promptly
26 report to the association each claim ~~which~~ THAT, on the basis
27 of the injuries or damages sustained, may reasonably be

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

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

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

1 multiplied by the average premium per car AND ADJUSTED TO REFLECT
2 THE MEMBER'S INSUREDS WHO HAVE SELECTED COVERAGE UNDER
3 SECTION 3107(1)(A)(ii) AND THE AMOUNT OF COVERAGE SELECTED. The
4 average premium per car shall be the total premium calculated
5 divided by the total earned car years of insurance providing the
6 security required by section 3101(1) or 3103(1) written in this
7 state of all members during the period to which the premium
8 applies. As used in this subdivision, "car" includes a
9 motorcycle.

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

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

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

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

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

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

3 (a) Sue and be sued in the name of the association. A judg-
4 ment against the association shall not create any direct liabil-
5 ity against the individual members of the association. The asso-
6 ciation may provide for the indemnification of its members, mem-
7 bers of the board of directors of the association, and officers,
8 employees, and other persons lawfully acting on behalf of the
9 association.

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

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

16 (d) Pursuant to the REVISED plan of operation, adopt reason-
17 able rules for the administration of the association, enforce
18 those rules, and delegate authority, as the board considers nec-
19 essary to assure the proper administration and operation of the
20 association consistent with the REVISED plan of operation.

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

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

1 (G) PARTICIPATE AT THE ASSOCIATION'S EXPENSE IN THE
2 ADJUSTMENT OR MANAGEMENT OF CLAIMS FOR MEMBERS.

3 (H) UNDERTAKE AND FUND STUDIES ON TREATMENTS, TECHNIQUES,
4 AND OTHER MEASURES AND PROCEDURES TO REDUCE THE COSTS ASSOCIATED
5 WITH CATASTROPHIC CLAIMS.

6 (I) ~~(g)~~ Perform other acts not specifically enumerated in
7 this section ~~which~~ THAT are necessary or proper to accomplish
8 the purposes of the association and ~~which~~ THAT are not incon-
9 sistent with this section or the REVISED plan of operation.

10 (9) A board of directors is created, hereinafter referred to
11 as the board, which shall be responsible for the operation of the
12 association consistent with the REVISED plan of operation and
13 this section.

14 (10) The REVISED plan of operation shall provide for all of
15 the following:

16 (a) The establishment of necessary facilities.

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

18 ~~(c) A preliminary premium, payable by each member in pro-~~
19 ~~portion to its total first year premium, for initial expenses~~
20 ~~necessary to commence operation of the association.~~

21 (C) ~~(d)~~ Procedures to be utilized in charging premiums,
22 including adjustments from excess or deficient premiums from
23 prior periods.

24 (D) ~~(e)~~ Procedures governing the actual payment of premi-
25 ums to the association.

1 (E) ~~(f)~~ Reimbursement of each member of the board by the
2 association for actual and necessary expenses incurred on
3 association business.

4 (F) ~~(g)~~ The investment policy of the association.

5 (G) ~~(h)~~ Any other matters required by or necessary to
6 effectively implement this section.

7 ~~(11) Not more than 30 days after the effective date of this~~
8 ~~section, the commissioner shall convene an organizational meeting~~
9 ~~of the board. The board shall be initially composed of 5 members~~
10 ~~of the association appointed by the commissioner to serve as~~
11 ~~directors, and the commissioner or a designated representative of~~
12 ~~the commissioner serving as an ex officio member of the board~~
13 ~~without vote. The initial board and each successor~~ EACH board
14 shall include members ~~which~~ THAT would contribute a total of
15 not less than 40% of the total premium calculated pursuant to
16 subsection (7)(d). Each director AND THE COMMISSIONER shall be
17 entitled to 1 vote. The initial term of office of a director
18 shall be 2 years.

19 (12) As part of the REVISED plan of operation, the board
20 shall adopt rules providing for the composition and term of suc-
21 cessor boards to the initial board, consistent with the member-
22 ship composition requirements in subsections (11) and (13).
23 Terms of the directors shall be staggered so that the terms of
24 all the directors do not expire at the same time and so that a
25 director does not serve a term of more than 4 years.

1 (13) The board shall consist of 5 directors and the
2 commissioner. ~~shall be an ex officio member of the board~~
3 ~~without vote.~~

4 (14) Each director shall be appointed by the commissioner
5 and shall serve until that member's successor is selected and
6 qualified. The chairperson of the board shall be elected by the
7 board. A vacancy on the board shall be filled by the commis-
8 sioner consistent with the REVISED plan of operation.

9 (15) After the board is appointed, the board shall meet as
10 often as the chairperson, the commissioner, or the REVISED plan
11 of operation shall require, or at the request of any 3 members of
12 the board. The chairperson shall retain the right to vote on all
13 issues. Four members of the board shall constitute a quorum.

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

17 (17) ~~Not more than 60 days after the initial organizational~~
18 ~~meeting of the board,~~ BY JULY 1, 1990, the board shall submit to
19 the commissioner for approval a REVISED proposed plan of opera-
20 tion consistent with the objectives and provisions of this sec-
21 tion, ~~which~~ THAT shall provide for the economical, fair, and
22 nondiscriminatory administration of the association and for the
23 prompt and efficient provision of indemnity. If a REVISED plan
24 is not submitted ~~within this 60 day period~~ BY JULY 1, 1990,
25 then the commissioner, after consultation with the board, shall
26 formulate and place into effect a REVISED plan consistent with
27 this section.

1 (18) The REVISED plan of operation, unless approved sooner
2 in writing, shall be considered to meet the requirements of this
3 section if it is not disapproved by written order of the commis-
4 sioner within 30 days after the date of its submission. Before
5 disapproval of all or any part of the REVISED proposed plan of
6 operation, the commissioner shall notify the board in what
7 respect the REVISED plan of operation fails to meet the require-
8 ments and objectives of this section. If the board fails to
9 submit a SECOND revised plan of operation ~~which~~ THAT meets the
10 requirements and objectives of this section within the 30-day
11 period, the commissioner shall enter an order accordingly and
12 shall immediately formulate and place into effect a REVISED plan
13 consistent with the requirements and objectives of this section.

14 (19) The REVISED proposed plan of operation or amendments to
15 the REVISED plan of operation shall be subject to majority
16 approval by the board, ratified by a majority of the membership,
17 ~~having a vote,~~ with voting rights being apportioned according
18 to the premiums charged in subsection (7)(d) and shall be subject
19 to approval by the commissioner.

20 (20) Upon approval by the commissioner and ratification by
21 the members of the REVISED plan submitted, or upon the promulga-
22 tion of a REVISED plan by the commissioner, each insurer autho-
23 rized to write insurance providing the security required by sec-
24 tion 3101(1) in this state, as ~~defined~~ PROVIDED in this sec-
25 tion, shall be bound by and shall formally subscribe to and par-
26 ticipate in the REVISED plan approved as a condition of
27 maintaining its authority to transact insurance in this state.

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

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

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

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

13 Sec. 3107. (1) Personal protection insurance benefits are
14 payable for the following:

15 (a) Allowable expenses ~~consisting of all reasonable~~
16 ~~charges~~ AS PROVIDED IN SUBPARAGRAPHS (i) AND (ii) incurred for
17 reasonably necessary products, services, and accommodations for
18 an injured person's care, recovery, or rehabilitation.
19 ~~Allowable expenses within personal protection insurance coverage~~
20 ~~shall not include charges for a hospital room in excess of a rea-~~
21 ~~sonable and customary charge for semiprivate accommodations~~
22 ~~except when the injured person requires special or intensive~~
23 ~~care, or before October 1, 1988 charges for funeral and burial~~
24 ~~expenses in excess of \$1,000.00. Beginning October 1, 1988, ben-~~
25 ~~efits for funeral and burial expenses shall be payable in the~~
26 ~~amount set forth in the policy but shall not be less than~~
27 ~~\$1,750.00 nor more than \$5,000.00.~~ ON FORMS APPROVED BY THE

1 COMMISSIONER, AN INSURER SHALL OFFER IN WRITING THE FOLLOWING
2 COVERAGES AND AN INSURED SHALL SELECT IN WRITING 1 OF THE FOLLOW--
3 ING COVERAGES:

4 (i) COVERAGE FOR ALLOWABLE EXPENSES FOR ALL REASONABLE
5 CHARGES INCURRED FOR REASONABLY NECESSARY PRODUCTS, SERVICES, AND
6 ACCOMMODATIONS FOR AN INJURED PERSON'S CARE, RECOVERY, OR
7 REHABILITATION.

8 (ii) COVERAGE FOR ALLOWABLE EXPENSES FOR ALL REASONABLE
9 CHARGES UP TO A \$250,000.00, \$500,000.00, \$1,000,000.00, OR
10 \$2,000,000.00 LIMIT AS SELECTED BY THE INSURED, FOR REASONABLY
11 NECESSARY PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR AN INJURED
12 PERSON'S CARE, RECOVERY, OR REHABILITATION. AN INSURER SHALL
13 OFFER COVERAGE UNDER THIS SUBPARAGRAPH AT APPROPRIATELY REDUCED
14 PREMIUM RATES AND SUBJECT TO PRIOR APPROVAL BY THE COMMISSIONER.
15 COVERAGE UNDER THIS SUBPARAGRAPH SHALL APPLY ONLY TO BENEFITS
16 PAYABLE TO THE PERSON NAMED IN THE POLICY, THE SPOUSE OF THE
17 INSURED, AND ANY RELATIVE OF EITHER DOMICILED IN THE SAME
18 HOUSEHOLD.

19 (b) ~~Work~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2),
20 loss consisting of loss of income from work an injured person
21 would have performed during the first 3 years after the date of
22 the accident if he or she had not been injured and expenses not
23 exceeding \$20.00 per day, reasonably incurred in obtaining ordi-
24 nary and necessary services in lieu of those that, if he or she
25 had not been injured, an injured person would have performed
26 during the first 3 years after the date of the accident, not for
27 income but for the benefit of himself or herself or of his or her

1 dependent. Work loss does not include any loss after the date on
2 which the injured person dies. Because the benefits received
3 from personal protection insurance for loss of income are not
4 taxable income, the benefits payable for such loss of income
5 shall be reduced 15% unless the claimant presents to the insurer
6 in support of his or her claim reasonable proof of a lower value
7 of the income tax advantage in his or her case, in which case the
8 lower value shall apply. AN INSURER SHALL OFFER THE FOLLOWING
9 COVERAGES:

10 (i) Beginning March 30, 1973, ~~the~~ benefits payable for
11 work loss sustained in a single 30-day period and ~~the~~ income
12 earned by an injured person for work during the same period IN AN
13 AMOUNT THAT together shall not exceed \$1,000.00, which maximum
14 shall apply pro rata to any lesser period of work loss.
15 Beginning October 1, 1974, the maximum shall be adjusted annually
16 to reflect changes in the cost of living under rules prescribed
17 by the commissioner but any change in the maximum shall apply
18 only to benefits arising out of accidents occurring subsequent to
19 the date of change in the maximum.

20 (ii) BEGINNING APRIL 1, 1991, BENEFITS PAYABLE FOR WORK LOSS
21 SUSTAINED IN A SINGLE 30-DAY PERIOD AND INCOME EARNED BY AN
22 INJURED PERSON FOR WORK DURING THE SAME PERIOD IN AN AMOUNT THAT
23 TOGETHER IS NOT LESS THAN \$1,000.00 AND APPLIES PRO RATA TO ANY
24 LESSER PERIOD OF WORK LOSS.

25 (2) A PERSON MAY WAIVE COVERAGE FOR WORK LOSS BENEFITS FOR
26 HIMSELF OR HERSELF ONLY UNDER SUBSECTION (1)(B). AN INSURER
27 SHALL OFFER A REDUCED PREMIUM RATE TO A PERSON WHO WAIVES

1 COVERAGE UNDER THIS SUBSECTION FOR WORK LOSS BENEFITS UNDER
2 SUBSECTION (1)(B).

3 (3) AS USED IN THIS SECTION, ALLOWABLE EXPENSES WITHIN PER-
4 SONAL PROTECTION INSURANCE COVERAGE SHALL NOT INCLUDE CHARGES FOR
5 A HOSPITAL ROOM IN EXCESS OF A REASONABLE AND CUSTOMARY CHARGE
6 FOR SEMIPRIVATE ACCOMMODATIONS EXCEPT IF THE INJURED PERSON
7 REQUIRES SPECIAL OR INTENSIVE CARE, OR FOR FUNERAL AND BURIAL
8 EXPENSES IN THE AMOUNT SET FORTH IN THE POLICY WHICH SHALL NOT BE
9 LESS THAN \$1,750.00 OR MORE THAN \$5,000.00. UNTIL RULES ARE
10 PROMULGATED UNDER SUBSECTION (4), ALLOWABLE EXPENSES SHALL NOT
11 EXCEED THE AMOUNT A HEALTH CARE FACILITY OR HEALTH CARE PROVIDER
12 IS REIMBURSED FOR TREATMENT, SERVICE, ACCOMMODATION, AND MEDICINE
13 PURSUANT TO THE FEE SCHEDULES CONTAINED IN R 418.101 TO
14 R 418.2324 OF THE MICHIGAN ADMINISTRATIVE CODE. ALLOWABLE
15 EXPENSES FOR HOME HEALTH CARE SHALL NOT EXCEED THE REASONABLE AND
16 CUSTOMARY CHARGES FOR SIMILAR CARE IN A LICENSED HEALTH CARE
17 FACILITY. ALLOWABLE EXPENSES FOR HOME MODIFICATION ACCOMMODA-
18 TIONS SHALL NOT EXCEED \$50,000.00 ADJUSTED ANNUALLY TO REFLECT
19 CHANGES IN THE COST OF LIVING UNDER RULES PRESCRIBED BY THE COM-
20 MISSIONER BUT ANY CHANGE IN THE MAXIMUM SHALL APPLY ONLY TO BENE-
21 FITS ARISING OUT OF ACCIDENTS OCCURRING SUBSEQUENT TO THE DATE OF
22 CHANGE IN THE MAXIMUM. ALLOWABLE EXPENSES FOR VOCATIONAL REHA-
23 BILITATION SHALL BE LIMITED TO AN INJURED PERSON WHO WAS EMPLOYED
24 WITHIN THE 1 YEAR IMMEDIATELY PRECEDING THE ACCIDENT AND TO THOSE
25 EXPENSES THAT ARE REASONABLY NECESSARY TO RETURN THE PERSON TO
26 THE EMPLOYMENT STATUS HE OR SHE HAD PRIOR TO THE ACCIDENT IN THE
27 FOLLOWING ORDER OF PRIORITY:

1 (A) RETURN TO WORK PERFORMING THE SAME JOB WITH THE SAME
2 EMPLOYER.

3 (B) RETURN TO WORK PERFORMING THE SAME BUT MODIFIED JOB WITH
4 THE SAME EMPLOYER.

5 (C) RETURN TO WORK PERFORMING A DIFFERENT JOB, CAPITALIZING
6 ON TRANSFERABLE SKILLS, WITH THE SAME EMPLOYER.

7 (D) RETURN TO WORK PERFORMING A DIFFERENT JOB, ONE THAT CAP-
8 ITALIZES ON TRANSFERABLE SKILLS, WITH A DIFFERENT EMPLOYER.

9 (E) RETURN TO WORK PERFORMING A DIFFERENT JOB, ONE THAT
10 REQUIRES EXTENSIVE AND PROLONGED TRAINING, WITH THE SAME OR DIF-
11 FERENT EMPLOYER.

12 (F) RETURN TO WORK IN SELF-EMPLOYMENT.

13 (4) THE COMMISSIONER SHALL PROMULGATE RULES ESTABLISHING
14 SCHEDULES OF MAXIMUM FEES BY A HEALTH CARE FACILITY OR HEALTH
15 CARE PROVIDER FOR TREATMENT, SERVICE, ACCOMMODATION, AND
16 MEDICINE. THE SCHEDULES OF MAXIMUM FEES ESTABLISHED BY THESE
17 RULES SHALL NOT EXCEED THE AMOUNTS ESTABLISHED IN THE SCHEDULES
18 OF MAXIMUM FEES CONTAINED IN R 418.101 TO R 418.2324 OF THE
19 MICHIGAN ADMINISTRATIVE CODE. THE COMMISSIONER SHALL SUBMIT THE
20 PROPOSED RULES FOR PUBLIC HEARING PURSUANT TO THE ADMINISTRATIVE
21 PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969,
22 BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS,
23 WITHIN 12 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
24 THAT ADDED THIS SUBSECTION.

25 (5) THERE SHALL BE NO LIABILITY ON THE PART OF, AND NO CAUSE
26 OF ACTION OF ANY NATURE SHALL ARISE AGAINST, AN INSURER OR AN
27 INSURER'S AGENT, SOLICITOR, EMPLOYEE, OFFICER, OR DIRECTOR BASED

1 UPON AN INSURED'S SELECTION OF COVERAGE UNDER
2 SECTION 3107(1)(A)(ii).

3 Sec. 3109. (1) Benefits provided or required to be provided
4 under the laws of any state or the federal government shall be
5 subtracted from the personal protection insurance benefits other-
6 wise payable for the injury.

7 (2) An injured person is a natural person suffering acciden-
8 tal bodily injury.

9 (3) An insurer providing personal protection insurance bene-
10 fits may offer, at appropriately reduced premium rates, a deduct-
11 ible of a specified dollar amount ~~which~~ THAT does not exceed
12 ~~\$300.00~~ \$1,000.00 per accident. This deductible may be appli-
13 cable to all or any specified types of personal protection insur-
14 ance benefits but shall apply only to benefits payable to the
15 person named in the policy, his OR HER spouse, and any relative
16 of either domiciled in the same household. Any other deductible
17 provisions require the prior approval of the commissioner.

18 Sec. 3109a. (1) ~~An insurer providing personal protection~~
19 ~~insurance benefits shall offer, at appropriately reduced premium~~
20 ~~rates, deductibles and exclusions reasonably related to other~~
21 ~~health and accident coverage on the insured. The deductibles and~~
22 ~~exclusions required to be offered by this section shall be~~
23 ~~subject to prior approval by the commissioner and shall apply~~
24 ~~only to benefits payable to the person named in the policy, the~~
25 ~~spouse of the insured and any relative of either domiciled in the~~
26 ~~same household.~~ PERSONAL PROTECTION INSURANCE BENEFITS OTHERWISE
27 PAYABLE FOR THE INJURY SHALL NOT BE PAYABLE TO THE EXTENT AN

1 INSURED HAS OTHER HEALTH AND ACCIDENT COVERAGE OR BENEFITS IN
2 ADDITION TO HIS OR HER PERSONAL PROTECTION INSURANCE BENEFITS.

3 Sec. 3113. A person is not entitled to be paid personal
4 protection insurance benefits for accidental bodily injury if at
5 the time of the accident any of the following circumstances
6 existed:

7 (a) The person was using a motor vehicle or motorcycle
8 ~~which~~ THAT he or she had taken unlawfully, unless the person
9 reasonably believed that he or she was entitled to take and use
10 the vehicle.

11 (b) The person was the owner or registrant of a motor vehi-
12 cle or motorcycle involved in the accident with respect to which
13 the security required by section 3101 or 3103 was not in effect.

14 (c) THE PERSON WAS THE OPERATOR OF OR PASSENGER IN A MOTOR
15 VEHICLE OR MOTORCYCLE INVOLVED IN THE ACCIDENT AND HE OR SHE KNEW
16 THAT THE SECURITY REQUIRED BY SECTION 3101 OR 3103 WAS NOT IN
17 EFFECT.

18 (d) ~~(c)~~ The person was not a resident of this state ~~—~~
19 AND was an occupant of a motor vehicle or motorcycle not regis-
20 tered in this state. ~~—, and was not insured by an insurer which~~
21 ~~has filed a certification in compliance with section 3163.~~

22 Sec. 3116. (1) A subtraction from personal protection
23 insurance benefits shall not be made because of the value of a
24 claim in tort based on the same accidental bodily injury.

25 (2) A subtraction from or reimbursement for personal protec-
26 tion insurance benefits paid or payable under this chapter shall
27 be made only if recovery is realized upon a tort claim ~~arising~~

1 ~~from an accident occurring outside this state, a tort claim~~
2 ~~brought within this state against the owner or operator of a~~
3 ~~motor vehicle with respect to which the security required by sec-~~
4 ~~tion 3101 (3) and (4) was not in effect, or a tort claim brought~~
5 ~~within this state based on intentionally caused harm to persons~~
6 ~~or property,~~ and shall be made only to the extent that the
7 recovery realized by the claimant is for damages for which the
8 claimant has received or would otherwise be entitled to receive
9 personal protection insurance benefits. A subtraction shall be
10 made only to the extent of the recovery, exclusive of reasonable
11 attorneys' fees and other reasonable expenses incurred in effect-
12 ing the recovery. If personal protection insurance benefits have
13 already been received, the claimant shall repay to the insurers
14 out of the recovery a sum equal to the benefits received, but not
15 more than the recovery exclusive of reasonable attorneys' fees
16 and other reasonable expenses incurred in effecting the
17 recovery. The insurer shall have a lien on the recovery to this
18 extent. A recovery by an injured person or his or her estate for
19 loss suffered by the person shall not be subtracted in calculat-
20 ing benefits due a dependent after the death and a recovery by a
21 dependent for loss suffered by the dependent after the death
22 shall not be subtracted in calculating benefits due the injured
23 person.

24 (3) A personal protection insurer with a right of reimburse-
25 ment under subsection (1), if suffering loss from inability to
26 collect reimbursement out of a payment received by a claimant
27 upon a tort claim is entitled to indemnity from a person who,

1 with notice of the insurer's interest, made the payment to the
2 claimant without making the claimant and the insurer joint payees
3 as their interests may appear or without obtaining the insurer's
4 consent to a different method of payment.

5 (4) A subtraction or reimbursement shall not be due the
6 claimant's insurer from that portion of any recovery to the
7 extent that recovery is realized for noneconomic loss as provided
8 in section 3135(1) and (2)(b) or for allowable expenses, work
9 loss, and survivor's loss as defined in sections 3107 to 3110 in
10 excess of the amount recovered by the claimant from his or her
11 insurer.

12 Sec. 3135. (1) A person remains subject to tort liability
13 for noneconomic loss caused by his or her ownership, maintenance,
14 or use of a motor vehicle only if the injured person has suffered
15 death, serious impairment of body function, or permanent serious
16 disfigurement. FOR A CAUSE OF ACTION FOR DAMAGES PURSUANT TO
17 THIS SUBSECTION ARISING ON AND AFTER JANUARY 1, 1990, ALL OF THE
18 FOLLOWING APPLY:

19 (A) THE INJURED PERSON SHALL NOT HAVE SUFFERED SERIOUS
20 IMPAIRMENT OF BODY FUNCTION UNLESS THE PERSON HAS SUFFERED AN
21 OBJECTIVELY MANIFESTED IMPAIRMENT OF AN IMPORTANT BODY FUNCTION
22 THAT AFFECTS HIS OR HER GENERAL ABILITY TO LEAD A NORMAL LIFE.
23 THE ISSUE OF WHETHER AN INJURED PERSON HAS SUFFERED SERIOUS
24 IMPAIRMENT OF BODY FUNCTION SHALL BE A QUESTION OF LAW FOR THE
25 COURT.

26 (B) EXCEPT AS AUTHORIZED UNDER SECTION 5851 OF THE REVISED
27 JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961,

1 BEING SECTION 600.5851 OF THE MICHIGAN COMPILED LAWS, AN ACTION
2 UNDER THIS SUBSECTION SHALL NOT BE COMMENCED LATER THAN 3 YEARS
3 AFTER THE DATE OF THE ACCIDENT THAT CAUSES THE INJURY REGARDLESS
4 OF WHEN THE PERSON DISCOVERS THAT HE OR SHE HAS SUFFERED A SERI-
5 OUS IMPAIRMENT OF BODY FUNCTION, PERMANENT SERIOUS DISFIGUREMENT,
6 OR DEATH.

7 (C) DAMAGES SHALL BE ASSESSED ON THE BASIS OF COMPARATIVE
8 FAULT, EXCEPT THAT FOR CLAIMS FILED ON OR AFTER THE EFFECTIVE
9 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION DAMAGES
10 SHALL NOT BE ASSESSED IN FAVOR OF A PARTY WHO IS MORE THAN 50% AT
11 FAULT.

12 (2) Notwithstanding any other provision of law, tort liabil-
13 ity arising from the ownership, maintenance, or use within this
14 state of a motor vehicle with respect to which the security
15 required by section ~~3101(3) and (4)~~ 3101(1) was in effect is
16 abolished except as to:

17 (a) Intentionally caused harm to persons or property. Even
18 though a person knows that harm to persons or property is sub-
19 stantially certain to be caused by his or her act or omission,
20 the person does not cause or suffer such harm intentionally if he
21 or she acts or refrains from acting for the purpose of averting
22 injury to any person, including himself or herself, or for the
23 purpose of averting damage to tangible property.

24 (b) Damages for noneconomic loss as provided and limited in
25 subsection (1).

26 (c) Damages for allowable expenses, work loss, and
27 survivor's loss as defined in sections 3107 to 3110-in excess of

1 the daily, monthly, and 3-year limitations contained in those
2 sections. The party liable for damages is entitled to an exemp-
3 tion reducing his or her liability by the amount of taxes that
4 would have been payable on account of income the injured person
5 would have received if he or she had not been injured.

6 (d) Damages up to \$400.00 to motor vehicles, to the extent
7 that the damages are not covered by insurance. An action for
8 damages pursuant to this subdivision shall be conducted in com-
9 pliance with subsection (3).

10 (3) In an action for damages pursuant to subsection (2)(d):

11 (a) Damages shall be assessed on the basis of comparative
12 fault, except that damages shall not be assessed in favor of a
13 party who is more than 50% at fault.

14 (b) Liability shall not be a component of residual liabili-
15 ty, as prescribed in section 3131, for which maintenance of
16 security is required by this act.

17 (4) Actions under subsection (2)(d) shall be commenced,
18 whenever legally possible, in the small claims division of the
19 district court or ~~the conciliation division of the common pleas~~
20 ~~court of the city of Detroit or~~ the municipal court. If the
21 defendant or plaintiff removes ~~such an~~ THE action to a higher
22 court and does not prevail, the judge may assess costs.

23 (5) A decision of a court made pursuant to subsection (2)(d)
24 ~~—~~ shall not be res judicata in any proceeding to determine any
25 other liability arising from the same circumstances as gave rise
26 to the action brought pursuant to subsection (2)(d).

1 ~~(6) Subsections (2)(d), (3), (4), and (5) shall take effect~~
 2 ~~July 1, 1980.~~

3 Sec. 3142. (1) Personal protection insurance benefits are
 4 payable as loss accrues.

5 (2) Personal protection insurance benefits are overdue if
 6 not paid within 30 days after an insurer receives reasonable
 7 proof of the fact and of the amount of loss sustained. If rea-
 8 sonable proof is not supplied as to the entire claim, the amount
 9 supported by reasonable proof is overdue if not paid within 30
 10 days after the proof is received by the insurer. Any part of the
 11 remainder of the claim that is later supported by reasonable
 12 proof is overdue if not paid within 30 days after the proof is
 13 received by the insurer. For the purpose of calculating the
 14 extent to which benefits are overdue, payment shall be treated as
 15 made on the date a draft or other valid instrument was placed in
 16 the United States mail in a properly addressed, postpaid
 17 envelope, or, if not so posted, on the date of delivery.

18 (3) An overdue payment bears ~~simple~~ interest at the rate
 19 ~~of 12% per annum~~ SET BY SECTION 6013(6) OF THE REVISED JUDICA-
 20 TURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING
 21 SECTION 600.6013 OF THE MICHIGAN COMPILED LAWS. INTEREST PAID
 22 UNDER THIS SUBSECTION SHALL BE OFFSET BY INTEREST PAYABLE UNDER
 23 SECTION 6013(6) OF ACT NO. 236 OF THE PUBLIC ACTS OF 1961.

24 Sec. 3315. The facility shall establish as part of its plan
 25 of operation a program to reduce the participation ratio of an
 26 insurer under section 3303(e)(i) based upon the number of private
 27 passenger nonfleet automobiles voluntarily written in an urban

1 area. The program shall also include reductions to the
2 participation ratio for any increases in the number of private
3 passenger nonfleet automobiles voluntarily written in an urban
4 area. However, an insurer's participation ratio shall not be
5 increased by more than 10% annually as a result of this section.
6 As used in this section "urban area" means the area within the
7 boundaries of a city in this state which has a population of
8 1,000,000 or more as determined by the latest of each succeeding
9 federal decennial census and includes any city located wholly
10 within the boundaries of a city in this state which has a popula-
11 tion of 1,000,000 or more as determined by the latest of each
12 succeeding federal decennial census. ~~This section is repealed~~
13 ~~effective July 1, 1991.~~

14 Sec. 6101. As used in this chapter:

15 (a) "Authority" means the automobile theft AND DRUNK DRIVING
16 prevention authority.

17 (b) "Board" means the board of directors of the automobile
18 theft AND DRUNK DRIVING prevention authority.

19 (c) "Economic automobile theft" means automobile theft per-
20 petrated for financial gain.

21 Sec. 6103. (1) There is hereby created a public body corpo-
22 rate and politic to be known as the automobile theft AND DRUNK
23 DRIVING prevention authority.

24 (2) The purposes, powers, and duties of the authority shall
25 be vested in and exercised by a board of directors.

26 (3) The board of directors shall consist of 7 members,
27 appointed by the governor, with the advice and consent of the

1 senate, 2 of whom shall be representative of purchasers of
2 automobile insurance in this state, 2 of whom shall be represen-
3 tative of automobile insurers doing business in this state, 2 of
4 whom shall be representative of law enforcement officials in this
5 state, and 1 of whom shall be the director of the department of
6 state police or his or her designee. The governor shall desig-
7 nate 1 member to serve as the chairperson of the authority.

8 (4) Members of the board shall serve for a term of 4 years.

9 (5) Members of the board shall serve without compensation
10 for their membership on the board, except that members of the
11 board shall receive reasonable reimbursement for necessary travel
12 and expenses.

13 (6) A majority of the members of the board shall constitute
14 a quorum for the transaction of business at a meeting, or the
15 exercise of a power or function of the authority, notwithstanding
16 the existence of 1 or more vacancies. Notwithstanding any other
17 provision of law, action may be taken by the authority at a meet-
18 ing upon a vote of the majority of its members present in person
19 or through the use of amplified telephonic equipment, if autho-
20 rized by the bylaws of the board. The authority shall meet at
21 the call of the chair or as may be provided in the bylaws of the
22 authority. Meetings of the authority may be held anywhere within
23 the state of Michigan.

24 (7) The authority shall be within the department of state
25 police and shall exercise its prescribed statutory powers,
26 duties, and functions independently of the head of that
27 department. The budgeting, procurement, and related functions of

1 the authority, and administrative responsibilities for employees
2 of the authority, shall be performed under the direction and
3 supervision of the director of the department of state police.

4 Sec. 6105. The authority shall have the powers necessary or
5 convenient to carry out and effectuate the purposes and provi-
6 sions of this chapter and the purposes of the authority and the
7 powers delegated by other laws, including, but not limited to,
8 the power to:

9 (a) Sue and be sued; to have a seal and alter the same at
10 pleasure; to have perpetual succession; to make, execute, and
11 deliver contracts, conveyances, and other instruments necessary
12 or convenient to the exercise of its powers; and to make and
13 amend bylaws.

14 (b) Solicit and accept gifts, grants, loans, funds collected
15 and placed in the automobile theft AND DRUNK DRIVING prevention
16 fund, and other aids from any person or the federal, state, or a
17 local government or any agency thereof.

18 (c) Make grants and investments.

19 (d) Procure insurance against any loss in connection with
20 its property, assets, or activities.

21 (e) Invest any money held in reserve or sinking funds, or
22 any money not required for immediate use or disbursement, at its
23 discretion and to name and use depositories for its money.

24 (f) Contract for goods and services and engage personnel as
25 is necessary, including the services of private consultants, man-
26 agers, counsel, auditors, and others for rendering professional,

1 management, and technical assistance and advice, payable out of
2 any money of the fund legally available for this purpose.

3 (g) Indemnify and procure insurance indemnifying any member
4 of the board from personal loss or accountability from liability
5 resulting from a member's action or inaction as a member of the
6 board.

7 (h) Do all other things necessary or convenient to achieve
8 the objectives and purposes of the authority, this chapter, or
9 other laws.

10 Sec. 6107. (1) ~~Prior to April 1, 1986, and prior to~~
11 ~~April 1 of each year thereafter, each~~ EACH insurer engaged in
12 writing insurance coverages ~~which~~ THAT provide the security
13 required by section 3101 (1) within this state, as a condition of
14 its authority to transact insurance in this state, shall pay to
15 the authority BOTH OF THE FOLLOWING ASSESSMENTS:

16 (A) PRIOR TO APRIL 1 OF EACH YEAR, an assessment equal to
17 \$1.00 multiplied by the insurer's total earned car years of
18 insurance providing the security required by section 3101 (1)
19 written in this state during the immediately preceding calendar
20 year.

21 (B) PRIOR TO APRIL 1, 1991 AND PRIOR TO APRIL 1 OF EACH YEAR
22 THEREAFTER, AN ASSESSMENT EQUAL TO \$100.00 FOR EACH INSURED, AND
23 COLLECTED FROM EACH INSURED, WHO HAS BEEN CONVICTED, OR SUBJECT
24 TO A PROBATE COURT ORDER OF DISPOSITION, WITHIN 3 YEARS PRIOR TO
25 THE APRIL 1 ASSESSMENT OF A VIOLATION OF ANY OF THE OFFENSES
26 LISTED IN SECTION 2103(1)(D).

1 (2) Money received pursuant to subsection (1), and all other
2 money received by the authority, shall be segregated and placed
3 in a fund to be known as the automobile theft AND DRUNK DRIVING
4 prevention fund. The automobile theft AND DRUNK DRIVING preven-
5 tion fund shall be administered by the authority.

6 (3) Money in the automobile theft AND DRUNK DRIVING preven-
7 tion fund shall be expended in the following order of priority:

8 (a) To pay the costs of administration of the authority.

9 (b) To achieve the purposes and objectives of this chapter,
10 which may include, but not be limited to, the following:

11 (i) Provide financial support to the department of state
12 police and local law enforcement agencies for economic automobile
13 theft AND DRUNK DRIVING enforcement teams.

14 (ii) Provide financial support to state or local law
15 enforcement agencies for programs designed to reduce the inci-
16 dence of economic automobile theft AND DRUNK DRIVING.

17 (iii) Provide financial support to local prosecutors for
18 programs designed to reduce the incidence of economic automobile
19 theft AND DRUNK DRIVING.

20 (iv) Provide financial support to judicial agencies for pro-
21 grams designed to reduce the incidence of economic automobile
22 theft AND DRUNK DRIVING.

23 (v) Provide financial support for neighborhood or community
24 organizations or business organizations for programs designed to
25 reduce the incidence of automobile theft AND DRUNK DRIVING.

26 (vi) Conduct educational programs designed to inform
27 automobile owners of methods of preventing automobile theft AND

1 OF THE DANGERS OF DRUNK DRIVING and to provide equipment, for
2 experimental purposes, to enable automobile owners to prevent
3 automobile theft.

4 (4) Money in the automobile theft AND DRUNK DRIVING preven-
5 tion fund shall only be used to enhance automobile theft AND
6 DRUNK DRIVING PREVENTION efforts as determined by the authority.

7 (5) Money in the automobile theft AND DRUNK DRIVING preven-
8 tion fund shall not be considered state money.

9 Sec. 6110. (1) The authority shall develop and implement a
10 plan of operation.

11 (2) The plan of operation shall include an assessment of the
12 scope of the problem of automobile theft AND DRUNK DRIVING,
13 including particular areas of the state where the problem is
14 greatest; an analysis of various methods of combating the problem
15 of automobile theft, ~~and~~ economic automobile theft, AND DRUNK
16 DRIVING; a plan for providing financial support to combat automo-
17 bile theft, ~~and~~ economic automobile theft, AND DRUNK DRIVING;
18 and an estimate of the funds required to implement the plan.

19 (3) The authority shall report annually on or before
20 February 1 to the governor and the legislature on its activities
21 in the preceding year.

22 Section 2. Sections 6115 and 6125 of Act No. 218 of the
23 Public Acts of 1956, being sections 500.6115 and 500.6125 of the
24 Michigan Compiled Laws, are repealed.

25 Section 3. Nothing in this 1989 amendatory act is intended
26 to alter or affect in any way the decisions of the United States
27 court of appeals for the sixth circuit in Northern Group

1 Services, Inc. v Auto Owners Insurance Company, 833 F. 2d 85
2 (1987) or the Michigan supreme court in Federal Kemper Insurance
3 Company, Inc. v Health Insurance Administration, Inc., 424 Mich
4 537 (1986).