

**SUBSTITUTE FOR
HOUSE BILL NO. 4007**

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3104 (MCL 500.3104), as amended by 2001 PA
3.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3104. (1) An unincorporated, nonprofit association to
2 be known as the catastrophic claims association, hereinafter
3 referred to as the association, is created. Each insurer engaged
4 in writing insurance coverages that provide the security required
5 by section 3101(1) within this state, as a condition of its
6 authority to transact insurance in this state, shall be a member
7 of the association and shall be bound by the plan of operation of
8 the association. Each insurer engaged in writing insurance
9 coverages that provide the security required by section 3103(1)
10 within this state, as a condition of its authority to transact

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1 insurance in this state, shall be considered a member of the
2 association, but only for purposes of premiums under subsection
3 (7)(d). Except as expressly provided in this section, the asso-
4 ciation is not subject to any laws of this state with respect to
5 insurers, but in all other respects the association is subject to
6 the laws of this state to the extent that the association would
7 be if it were an insurer organized and subsisting under chapter
8 50.

9 (2) The association shall provide and each member shall
10 accept indemnification for 100% of the amount of ultimate loss
11 sustained under personal protection insurance coverages in excess
12 of the following amounts in each loss occurrence:

13 (a) For a motor vehicle accident policy issued or renewed
14 before July 1, 2002, \$250,000.00.

15 (b) For a motor vehicle accident policy issued or renewed
16 during the period July 1, 2002 to June 30, 2003, \$300,000.00.

17 (c) For a motor vehicle accident policy issued or renewed
18 during the period July 1, 2003 to June 30, 2004, \$325,000.00.

19 (d) For a motor vehicle accident policy issued or renewed
20 during the period July 1, 2004 to June 30, 2005, \$350,000.00.

21 (e) For a motor vehicle accident policy issued or renewed
22 during the period July 1, 2005 to June 30, 2006, \$375,000.00.

23 (f) For a motor vehicle accident policy issued or renewed
24 during the period July 1, 2006 to June 30, 2007, \$400,000.00.

25 (g) For a motor vehicle accident policy issued or renewed
26 during the period July 1, 2007 to June 30, 2008, \$420,000.00.

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1 (h) For a motor vehicle accident policy issued or renewed
2 during the period July 1, 2008 to June 30, 2009, \$440,000.00.

3 (i) For a motor vehicle accident policy issued or renewed
4 during the period July 1, 2009 to June 30, 2010, \$460,000.00.

5 (j) For a motor vehicle accident policy issued or renewed
6 during the period July 1, 2010 to June 30, 2011, \$480,000.00.

7 (k) For a motor vehicle accident policy issued or renewed
8 during the period July 1, 2011 to June 30, 2013, \$500,000.00.
9 Beginning July 1, 2013, this \$500,000.00 amount shall be
10 increased biennially on July 1 of each odd-numbered year, for
11 policies issued or renewed before July 1 of the following
12 odd-numbered year, by the lesser of 6% or the consumer price
13 index, and rounded to the nearest \$5,000.00. This biennial
14 adjustment shall be calculated by the association by January 1 of
15 the year of its July 1 effective date.

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

19 (4) An insurer whose membership in the association has been
20 terminated by withdrawal shall continue to be bound by the plan
21 of operation, and upon withdrawal, all unpaid premiums that have
22 been charged to the withdrawing member are payable as of the
23 effective date of the withdrawal.

24 (5) An unsatisfied net liability to the association of an
25 insolvent member shall be assumed by and apportioned among the
26 remaining members of the association as provided in the plan of
27 operation. The association has all rights allowed by law on

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1 behalf of the remaining members against the estate or funds of
2 the insolvent member for sums due the association.

3 (6) If a member has been merged or consolidated into another
4 insurer or another insurer has reinsured a member's entire busi-
5 ness that provides the security required by section 3101(1) in
6 this state, the member and successors in interest of the member
7 remain liable for the member's obligations.

8 (7) The association shall do all of the following on behalf
9 of the members of the association:

10 (a) Assume 100% of all liability as provided in subsection
11 (2).

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

22 (c) Maintain relevant loss and expense data relative to all
23 liabilities of the association and require each member to furnish
24 statistics, in connection with liabilities of the association, at
25 the times and in the form and detail as may be required by the
26 plan of operation.

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1 (d) In a manner provided for in the plan of operation,
2 calculate and charge to members of the association a total
3 premium sufficient to cover the expected losses and expenses of
4 the association that the association will likely incur during the
5 period for which the premium is applicable. The premium shall
6 include an amount to cover incurred but not reported losses for
7 the period and may be adjusted for any excess or deficient premi-
8 ums from previous periods. Excesses or deficiencies from previ-
9 ous periods may be fully adjusted in a single period or may be
10 adjusted over several periods in a manner provided for in the
11 plan of operation. Each member shall be charged an amount equal
12 to that member's total written car years of insurance providing
13 the security required by section 3101(1) or 3103(1), or both,
14 written in this state during the period to which the premium
15 applies, multiplied by the average premium per car. The average
16 premium per car shall be the total premium calculated divided by
17 the total written car years of insurance providing the security
18 required by section 3101(1) or 3103(1) written in this state of
19 all members during the period to which the premium applies. A
20 MEMBER SHALL BE CHARGED A PREMIUM FOR A HISTORIC VEHICLE THAT IS
21 INSURED WITH THE MEMBER OF 20% OF THE PREMIUM CHARGED FOR A CAR
22 INSURED WITH THE MEMBER. As used in this subdivision: ~~—, "car"~~

23 (i) "CAR" includes a motorcycle BUT DOES NOT INCLUDE A HIS-
24 TORIC VEHICLE.

25 (ii) "HISTORIC VEHICLE" MEANS A VEHICLE THAT IS A REGISTERED
26 HISTORIC VEHICLE UNDER SECTION 803A OR 803P OF THE MICHIGAN
27 VEHICLE CODE, 1949 PA 300, MCL 257.803A AND 257.803P.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (a) The establishment of necessary facilities.

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

3 (c) Procedures to be utilized in charging premiums, includ-
4 ing adjustments from excess or deficient premiums from prior
5 periods.

6 (d) Procedures governing the actual payment of premiums to
7 the association.

8 (e) Reimbursement of each member of the board by the associ-
9 ation for actual and necessary expenses incurred on association
10 business.

11 (f) The investment policy of the association.

12 (g) Any other matters required by or necessary to effec-
13 tively implement this section.

14 (11) Each board shall include members that would contribute
15 a total of not less than 40% of the total premium calculated pur-
16 suant to subsection (7)(d). Each director shall be entitled to 1
17 vote. The initial term of office of a director shall be 2
18 years.

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

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

9 (15) After the board is appointed, the board shall meet as
10 often as the chairperson, the commissioner, or the plan of opera-
11 tion shall require, or at the request of any 3 members of the
12 board. The chairperson shall retain the right to vote on all
13 issues. Four members of the board 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, the board shall submit to the commissioner
19 for approval a proposed plan of operation consistent with the
20 objectives and provisions of this section, which shall provide
21 for the economical, fair, and nondiscriminatory administration of
22 the association and for the prompt and efficient provision of
23 indemnity. If a plan is not submitted within this 60-day period,
24 then the commissioner, after consultation with the board, shall
25 formulate and place into effect a plan consistent with this
26 section.

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1 (18) The plan of operation, unless approved sooner in
2 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 proposed plan of operation,
6 the commissioner shall notify the board in what respect the plan
7 of operation fails to meet the requirements and objectives of
8 this section. If the board fails to submit a revised plan of
9 operation that meets the requirements and objectives of this sec-
10 tion within the 30-day period, the commissioner shall enter an
11 order accordingly and shall immediately formulate and place into
12 effect a plan consistent with the requirements and objectives of
13 this section.

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

20 (20) Upon approval by the commissioner and ratification by
21 the members of the plan submitted, or upon the promulgation of a
22 plan by the commissioner, each insurer authorized to write insur-
23 ance providing the security required by section 3101(1) in this
24 state, as provided in this section, is bound by and shall for-
25 mally subscribe to and participate in the plan approved as a con-
26 dition of maintaining its authority to transact insurance in this
27 state.

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1 (21) The association is subject to all the reporting, loss
2 reserve, and investment requirements of the commissioner to the
3 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) The association does not have liability for losses
11 occurring before July 1, 1978.

12 (25) As used in this section:

13 (a) "Consumer price index" means the percentage of change in
14 the consumer price index for all urban consumers in the United
15 States city average for all items for the 24 months prior to
16 October 1 of the year prior to the July 1 effective date of the
17 biennial adjustment under subsection (2)(k) as reported by the
18 United States department of labor, bureau of labor statistics,
19 and as certified by the commissioner.

20 (b) "Motor vehicle accident policy" means a policy providing
21 the coverages required under section 3101(1).

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