

HOUSE BILL No. 4895

September 7, 2011, Introduced by Rep. O'Brien and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3104 (MCL 500.3104), as amended by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (2) **THE ASSOCIATION SHALL NOT REDUCE THE INDEMNIFICATION OF A**
9 **MEMBER'S ULTIMATE LOSS BASED UPON PAYMENTS BY OR RECOVERIES FROM**
10 **ITS POLICYHOLDER THROUGH SELF-INSURED RETENTIONS OR DEDUCTIBLES, OR**
11 **BASED UPON REINSURANCE OR OTHER SIMILAR PRE-LOSS CONTRACTUAL**
12 **ARRANGEMENTS.** The association shall provide and each member shall
13 accept indemnification for 100% of the amount of ultimate loss
14 sustained under personal protection insurance coverages in excess
15 of the following amounts in each loss occurrence:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) An unsatisfied net liability to the association of an
27 insolvent member shall be assumed by and apportioned among the

1 remaining members of the association as provided in the plan of
2 operation. The association has all rights allowed by law on behalf
3 of the remaining members against the estate or funds of the
4 insolvent member for sums due the association.

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

10 (7) The association shall do all of the following on behalf of
11 the members of the association:

12 (a) Assume 100% of all liability as provided in subsection
13 (2).

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

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

1 (d) In a manner provided for in the plan of operation,
2 calculate and charge to members of the association a total premium
3 sufficient to cover the expected losses and expenses of the
4 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 the
7 period and may be adjusted for any excess or deficient premiums
8 from previous periods. Excesses or deficiencies from previous
9 periods may be fully adjusted in a single period or may be adjusted
10 over several periods in a manner provided for in the plan of
11 operation. Each member shall be charged an amount equal to that
12 member's total written car years of insurance providing the
13 security required by section 3101(1) or 3103(1), or both, written
14 in this state during the period to which the premium applies,
15 multiplied by the average premium per car. The average premium per
16 car shall be the total premium calculated divided by the total
17 written car years of insurance providing the security required by
18 section 3101(1) or 3103(1) written in this state of all members
19 during the period to which the premium applies. A member shall be
20 charged a premium for a historic vehicle that is insured with the
21 member of 20% of the premium charged for a car insured with the
22 member. As used in this subdivision:

23 (i) "Car" includes a motorcycle but does not include a historic
24 vehicle.

25 (ii) "Historic vehicle" means a vehicle that is a registered
26 historic vehicle under section 803a or 803p of the Michigan vehicle
27 code, 1949 PA 300, MCL 257.803a and 257.803p.

1 (e) Require and accept the payment of premiums from members of
2 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 after
5 the premium charge.

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

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

10 (g) Establish procedures for reviewing claims procedures and
11 practices of members of the association. If the claims procedures
12 or practices of a member are considered inadequate to properly
13 service the liabilities of the association, the association may
14 undertake or may contract with another person, including another
15 member, to adjust or assist in the adjustment of claims for the
16 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 section,
20 the association may do all of the following:

21 (a) Sue and be sued in the name of the association. A judgment
22 against the association shall not create any direct liability
23 against the individual members of the association. The association
24 may provide for the indemnification of its members, members of the
25 board of directors of the association, and officers, employees, and
26 other persons lawfully acting on behalf of the association.

27 (b) Reinsure all or any portion of its potential liability

1 with reinsurers licensed to transact insurance in this state or
2 approved by the commissioner.

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

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

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

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

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

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

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

27 (a) The establishment of necessary facilities.

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

2 (c) Procedures to be utilized in charging premiums, including
3 adjustments from excess or deficient premiums from prior periods.

4 (d) Procedures governing the actual payment of premiums to the
5 association.

6 (e) Reimbursement of each member of the board by the
7 association for actual and necessary expenses incurred on
8 association business.

9 (f) The investment policy of the association.

10 (g) Any other matters required by or necessary to effectively
11 implement this section.

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

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

23 (13) The board shall consist of 5 directors, and the
24 commissioner shall be an ex officio member of the board without
25 vote.

26 (14) Each director shall be appointed by the commissioner and
27 shall serve until that member's successor is selected and

1 qualified. The chairperson of the board shall be elected by the
2 board. A vacancy on the board shall be filled by the commissioner
3 consistent with the plan of operation.

4 (15) After the board is appointed, the board shall meet as
5 often as the chairperson, the commissioner, or the plan of
6 operation shall require, or at the request of any 3 members of the
7 board. The chairperson shall retain the right to vote on all
8 issues. Four members of the board constitute a quorum.

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

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

22 (18) The plan of operation, unless approved sooner in writing,
23 shall be considered to meet the requirements of this section if it
24 is not disapproved by written order of the commissioner within 30
25 days after the date of its submission. Before disapproval of all or
26 any part of the proposed plan of operation, the commissioner shall
27 notify the board in what respect the plan of operation fails to

1 meet the requirements and objectives of this section. If the board
2 fails to submit a revised plan of operation that meets the
3 requirements and objectives of this section within the 30-day
4 period, the commissioner shall enter an order accordingly and shall
5 immediately formulate and place into effect a plan consistent with
6 the requirements and objectives of this section.

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

12 (20) Upon approval by the commissioner and ratification by the
13 members of the plan submitted, or upon the promulgation of a plan
14 by the commissioner, each insurer authorized to write insurance
15 providing the security required by section 3101(1) in this state,
16 as provided in this section, is bound by and shall formally
17 subscribe to and participate in the plan approved as a condition of
18 maintaining its authority to transact insurance in this state.

19 (21) The association is subject to all the reporting, loss
20 reserve, and investment requirements of the commissioner to the
21 same extent as would a member of the association.

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

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

1 (24) The association does not have liability for losses
2 occurring before July 1, 1978.

3 (25) As used in this section:

4 (a) "Consumer price index" means the percentage of change in
5 the consumer price index for all urban consumers in the United
6 States city average for all items for the 24 months prior to
7 October 1 of the year prior to the July 1 effective date of the
8 biennial adjustment under subsection (2)(k) as reported by the
9 United States department of labor, bureau of labor statistics, and
10 as certified by the commissioner.

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

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