

HOUSE BILL No. 5706

May 31, 2012, Introduced by Reps. Cotter, Horn, Heise, Somerville, Ananich, Yonker, Johnson, Kowall, Callton, Olson, MacGregor, Damrow and Hughes and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3020 and 3104 (MCL 500.3020 and 500.3104), section 3020 as amended by 2006 PA 106 and section 3104 as amended by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3020. (1) A policy of casualty insurance, except worker's
2 compensation and mortgage guaranty insurance, including all classes
3 of motor vehicle coverage, shall not be issued or delivered in this
4 state by an insurer authorized to do business in this state for
5 which a premium or advance assessment is charged, unless the policy
6 contains the following provisions:

7 (a) That the policy may be canceled at any time at the request
8 of the insured, in which case the insurer shall refund the excess

1 of paid premium or assessment above the pro rata rates for the
2 expired time, except as otherwise provided in subsections (2), (3),
3 ~~and (4)~~, **AND (8)**.

4 (b) Except as otherwise provided in subdivision (d), that the
5 policy may be canceled at any time by the insurer by mailing to the
6 insured at the insured's address last known to the insurer or an
7 authorized agent of the insurer, with postage fully prepaid, a not
8 less than 10 days' written notice of cancellation with or without
9 tender of the excess of paid premium or assessment above the pro
10 rata premium for the expired time.

11 (c) That the minimum earned premium on any policy canceled
12 ~~pursuant to~~ **UNDER** this subsection, other than automobile insurance
13 as defined in section 2102(2)(a) and (b), shall not be less than
14 the pro rata premium for the expired time or \$25.00, whichever is
15 greater.

16 (d) That an insurer may refuse to renew a malpractice
17 insurance policy only by mailing to the insured at the insured's
18 address last known to the insurer or an authorized agent of the
19 insurer, with postage fully prepaid, a not less than 60 days'
20 written notice of refusal to renew. As used in this subdivision,
21 "malpractice insurance" means malpractice insurance as described in
22 section 624(1)(h).

23 (2) An insurer may file a rule with the commissioner providing
24 for a minimum retention of premium for automobile insurance as
25 defined in section 2102(2)(a) and (b). The rule shall describe the
26 circumstances under which the retention is applied and shall set
27 forth the amount to be retained, which is subject to the approval

1 of the commissioner. The rule shall include, but need not be
2 limited to, the following provisions:

3 (a) That a minimum retention shall be applied only when the
4 amount exceeds the amount that would have been retained had the
5 policy been canceled on a pro rata basis.

6 (b) That a minimum retention does not apply to renewal
7 policies.

8 (c) That a minimum retention does not apply when a policy is
9 canceled for the following reasons:

10 (i) The insured is no longer required to maintain security
11 ~~pursuant to~~ **UNDER** section 3101(1).

12 (ii) The insured has replaced the automobile insurance policy
13 being canceled with an automobile insurance policy from another
14 insurer and provides proof of the replacement coverage to the
15 canceling insurer.

16 (3) Notwithstanding subsection (1), an insurer may issue a
17 noncancelable, nonrefundable, 6-month prepaid automobile insurance
18 policy in order for an insured to meet the registration
19 requirements of section 227a of the Michigan vehicle code, 1949 PA
20 300, MCL 257.227a.

21 (4) An insurer may provide for a short rate premium for
22 insurance on a motorcycle, watercraft, off-road vehicle, or
23 snowmobile. As used in this subsection:

24 (a) "Motorcycle" means that term as defined in section 3101.

25 (b) "Off-road vehicle" means an ORV as defined in section
26 81101 of the natural resources and environmental protection act,
27 1994 PA 451, MCL 324.81101.

1 (c) "Snowmobile" means that term as defined in section 82101
2 of the natural resources and environmental protection act, 1994 PA
3 451, MCL 324.82101.

4 (d) "Watercraft" means that term as defined in section 80301
5 of the natural resources and environmental protection act, 1994 PA
6 451, MCL 324.80301.

7 (5) Cancellation as prescribed in this section is without
8 prejudice to any claim originating before the cancellation. The
9 mailing of notice is prima facie proof of notice. Delivery of
10 written notice is equivalent to mailing.

11 (6) A notice of cancellation, including a cancellation notice
12 under section 3224, shall be accompanied by a statement that the
13 insured shall not operate or permit the operation of the vehicle to
14 which notice of cancellation is applicable, or operate any other
15 vehicle, unless the vehicle is insured as required by law.

16 (7) An insurer who wishes to provide for a short rate premium
17 under subsection (4) shall file with the commissioner pursuant to
18 chapter 24 or 26 a rule establishing a short rate premium. The rule
19 shall describe the circumstances under which the short rate is
20 applied and shall set forth the amount or percentage to be
21 retained.

22 **(8) THE PORTION OF A PAID PREMIUM THAT REFLECTS AN ASSESSMENT**
23 **OF THE CATASTROPHIC CLAIMS ASSOCIATION UNDER SECTION 3104 SHALL NOT**
24 **BE REFUNDED TO THE INSURED ON CANCELLATION OF THE POLICY TO WHICH**
25 **THE PREMIUM APPLIES.**

26 Sec. 3104. (1) An unincorporated, nonprofit association to be
27 known as the catastrophic claims association, ~~hereinafter referred~~

1 ~~to as the association,~~ is created. Each insurer engaged in writing
2 insurance coverages that provide the security required by section
3 3101(1) within this state, as a condition of its authority to
4 transact insurance in this state, shall be a member of the
5 association and shall be bound by the plan of operation of the
6 association. Each insurer engaged in writing insurance coverages
7 that provide the security required by section 3103(1) within this
8 state, as a condition of its authority to transact insurance in
9 this state, shall be considered a member of the association, but
10 only for purposes of premiums under subsection (7) (d). Except as
11 expressly provided in this section, the association is not subject
12 to any laws of this state with respect to insurers, but in all
13 other respects the association is subject to the laws of this state
14 to the extent that the association would be if it were an insurer
15 organized and subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

13 (k) For a motor vehicle accident policy issued or renewed
14 during the period July 1, 2011 to June 30, 2013, \$500,000.00.

15 Beginning July 1, 2013, this \$500,000.00 amount shall be increased
16 biennially on July 1 of each odd-numbered year, for policies issued
17 or renewed before July 1 of the following odd-numbered year, by the
18 lesser of 6% or the consumer price index, and rounded to the
19 nearest \$5,000.00. This biennial adjustment shall be calculated by
20 the association by January 1 of the year of its July 1 effective
21 date.

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

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

1 charged to the withdrawing member are payable as of the effective
2 date of the withdrawal.

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

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

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

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

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

27 (c) Maintain relevant loss and expense data relative to all

1 liabilities of the association and require each member to furnish
2 statistics, in connection with liabilities of the association, at
3 the times and in the form and detail as may be required by the plan
4 of operation.

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

27 (i) "Car" includes a motorcycle but does not include a historic

1 vehicle.

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

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

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

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

12 (f) Receive and distribute all ~~sums~~**MONEY** required by the
13 operation of the association.

14 (g) Establish procedures for reviewing claims procedures and
15 practices of members of the association. If the claims procedures
16 or practices of a member are considered inadequate to properly
17 service the liabilities of the association, the association may
18 undertake or may contract with another person, including another
19 member, to adjust or assist in the adjustment of claims for the
20 member on claims that create a potential liability to the
21 association and may charge the cost of the adjustment to the
22 member.

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

25 (a) Sue and be sued in the name of the association. A judgment
26 against the association shall not create any direct liability
27 against the individual members of the association. The association

1 may provide for the indemnification of its members, members of the
2 board of directors of the association, and officers, employees, and
3 other persons lawfully acting on behalf of the association.

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

7 (c) Provide for appropriate housing, equipment, and personnel
8 as may be necessary to assure the efficient operation of the
9 association.

10 (d) Pursuant to the plan of operation, adopt reasonable rules
11 for the administration of the association, enforce those rules, and
12 delegate authority, as the board considers necessary to assure the
13 proper administration and operation of the association consistent
14 with the plan of operation.

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

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

21 (g) Perform other acts not specifically enumerated in this
22 section that are necessary or proper to accomplish the purposes of
23 the association and that are not inconsistent with this section or
24 the plan of operation.

25 (9) A board of directors is created ~~, hereinafter referred to~~
26 ~~as the board, which shall be~~ **THAT IS** responsible for the operation
27 of the association consistent with the plan of operation and this

1 section.

2 (10) The plan of operation shall provide for all of the
3 following:

4 (a) The establishment of necessary facilities.

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

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

8 (d) Procedures governing the actual payment of premiums to the
9 association.

10 (e) Reimbursement of each member of the board by the
11 association for actual and necessary expenses incurred on
12 association business.

13 (f) The investment policy of the association.

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

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

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

27 (13) The board shall consist of 5 directors, and the

1 commissioner shall be an ex officio member of the board without
2 vote.

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

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

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

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

26 (18) The plan of operation, unless approved sooner in writing,
27 shall be considered to meet the requirements of this section if it

1 is not disapproved by written order of the commissioner within 30
2 days after the date of its submission. Before disapproval of all or
3 any part of the proposed plan of operation, the commissioner shall
4 notify the board in what respect the plan of operation fails to
5 meet the requirements and objectives of this section. If the board
6 fails to submit a revised plan of operation that meets the
7 requirements and objectives of this section within the 30-day
8 period, the commissioner shall enter an order accordingly and shall
9 immediately formulate and place into effect a plan consistent with
10 the requirements and objectives of this section.

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

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

23 (21) The association is subject to all the reporting, loss
24 reserve, and investment requirements of the commissioner to the
25 same extent as ~~would~~**IS** a member of the association.

26 (22) Premiums charged members by the association shall be
27 recognized in the rate-making procedures for insurance rates in the

1 same manner that expenses and premium taxes are recognized.
2 **HOWEVER, ALL OF THE FOLLOWING APPLY TO THE PORTION OF A PREMIUM**
3 **CHARGED TO AN INSURED THAT REFLECTS AN AMOUNT FOR A PREMIUM CHARGED**
4 **TO A MEMBER BY THE ASSOCIATION:**

5 (A) THE ENTIRE PORTION SHALL BE INCLUDED IN THE FIRST BILLING
6 PROVIDED TO THE INSURED UNDER A NEW OR RENEWED POLICY.

7 (B) THE INSURER SHALL NOT ALLOW THE PORTION TO BE PAID IN
8 INSTALLMENTS OR FINANCED.

9 (C) AFTER PAYMENT, THE PORTION SHALL NOT BE REFUNDED ON
10 CANCELLATION OF THE POLICY.

11 (D) THE INSURER SHALL PAY THE PORTION TO THE ASSOCIATION.

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

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

17 (25) As used in this section:

18 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION
19 CREATED IN SUBSECTION (1).

20 (B) "BOARD" MEANS THE BOARD OF DIRECTORS CREATED IN SUBSECTION
21 (9).

22 (C) ~~(a)~~-"Consumer price index" means the percentage of change
23 in the consumer price index for all urban consumers in the United
24 States city average for all items for the 24 months prior to
25 October 1 of the year prior to the July 1 effective date of the
26 biennial adjustment under subsection (2)(k) as reported by the
27 United States department of labor, bureau of labor statistics, and

1 as certified by the commissioner.

2 (D) ~~(b)~~—"Motor vehicle accident policy" means a policy
3 providing the coverages required under section 3101(1).

4 (E) ~~(e)~~—"Ultimate loss" means the actual loss amounts that a
5 member is obligated to pay and that are paid or payable by the
6 member, and do not include claim expenses. An ultimate loss is
7 incurred by the association on the date that the loss occurs.