

HOUSE BILL NO. 4111

January 29, 2019, Introduced by Reps. Berman, Robinson, Tyrone Carter, Yaroch, Marino, Maddock, Mueller, Kennedy, Gay-Dagnogo, Hertel and Wozniak 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~~**The catastrophic claims association is**
2 **created as an** unincorporated, nonprofit association. ~~to be known as~~
3 ~~the catastrophic claims association, hereinafter referred to as the~~
4 ~~association, is created.~~ Each insurer engaged in writing insurance
5 coverages that provide the security required by section 3101(1)
6 ~~within in~~ this state, as a condition of its authority to transact

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

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

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

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

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

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

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

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

29 (g) For a motor vehicle accident policy issued or renewed

1 during the period July 1, 2007 to June 30, 2008, \$420,000.00.

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

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

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

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

10 **(l) For a motor vehicle accident policy issued or renewed**
11 **during the period July 1, 2013 to June 30, 2015, \$530,000.00.**

12 **(m) For a motor vehicle accident policy issued or renewed**
13 **during the period July 1, 2015 to June 30, 2017, \$545,000.00.**

14 **(n) For a motor vehicle accident policy issued or renewed**
15 **during the period July 1, 2017 to June 30, 2019, \$555,000.00.**

16 Beginning July 1, ~~2013, 2019~~, this ~~\$500,000.00~~ **\$555,000.00** amount
17 ~~shall~~ **must** be increased biennially on July 1 of each odd-numbered
18 year, for policies issued or renewed before July 1 of the following
19 odd-numbered year, by the lesser of 6% or the ~~consumer price index,~~
20 **Consumer Price Index**, and rounded to the nearest \$5,000.00. ~~This~~
21 **The association shall calculate this** biennial adjustment ~~shall be~~
22 ~~calculated by the association by~~ January 1 of the year of its July
23 1 effective date.

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

27 (4) An insurer whose membership in the association has been
28 terminated by withdrawal ~~shall continue~~ **continues** to be bound by
29 the plan of operation, and ~~upon~~ **on** withdrawal, all unpaid premiums

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

3 (5) An unsatisfied net liability to the association of an
4 insolvent member ~~shall~~**must** 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 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~~**must** 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
28 liabilities of the association and require each member to furnish
29 statistics, in connection with liabilities of the association, at

1 the times and in the form and detail as ~~may be~~ required by the plan
2 of operation.

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

25 ~~(i) "Car" includes a motorcycle but does not include a historic~~
26 ~~vehicle.~~

27 ~~(ii) "Historic vehicle" means a vehicle that is a registered~~
28 ~~historic vehicle under section 803a or 803p of the Michigan vehicle~~
29 ~~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~~**money** required by the
 9 operation 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 **(h) Provide all information required, and as requested by the**
 20 **director of the department, for purposes of the examination**
 21 **required under subsection (23).**

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

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

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

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

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

12 (e) Contract for goods and services, including independent
13 claims management, actuarial, investment, and legal services, from
14 others ~~within~~**in** or ~~without~~**outside of** this state to assure the
15 efficient 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 of
20 the association and that are not inconsistent with this section or
21 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~~ **and**
24 **shall operate** the association consistent with the plan of operation
25 and this section.

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

28 (a) The establishment of necessary facilities.

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

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

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

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

8 (f) The investment policy of the association.

9 **(g) Providing information to the department for purposes of**
10 **subsection (23).**

11 **(h)** ~~(g)~~ Any other matters required by or necessary to
12 effectively implement this section.

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

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

25 (13) The board ~~shall consist~~ **consists** of 5 directors ~~,~~ and the
26 ~~commissioner~~ **director of the department, who** shall ~~be~~ **serve as** an
27 ex officio, **nonvoting** member of the board. ~~without vote.~~

28 (14) ~~Each director~~ **The director of the department** shall ~~be~~
29 ~~appointed by the commissioner and~~ **appoint the directors. A director**

1 shall serve until ~~that member's~~ **his or her** successor is selected
2 and qualified. The **board shall elect the** chairperson of the board.
3 ~~shall be elected by the board. A~~ **The director of the department**
4 **shall fill any** vacancy on the board ~~shall be filled by the~~
5 ~~commissioner consistent with~~ **as provided in** the plan of operation.

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

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

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

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

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

8 (17) ~~(19) The proposed plan of operation or~~ **Any** amendments to
 9 the plan of operation **of the association** are subject to majority
 10 approval by the board, ~~ratified~~ **ratification** by a majority of the
 11 membership having a vote, with voting rights being apportioned
 12 according to the premiums charged in subsection (7) (d), and ~~are~~
 13 ~~subject to approval by the commissioner.~~ **director of the department.**

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

22 (19) ~~(21) The association is subject to all the reporting,~~
 23 ~~loss reserve, and investment requirements of the commissioner~~
 24 **director of the department** to the same extent as ~~would a member~~ **are**
 25 **the members** of the association.

26 (20) ~~(22) Premiums charged members by the association shall~~
 27 **must** be recognized in the rate-making procedures for insurance
 28 rates in the same manner that expenses and premium taxes are
 29 recognized.

1 (21) ~~(23)~~The ~~commissioner~~**director of the department** or an
 2 authorized representative of the ~~commissioner~~**director of the**
 3 **department** may visit the association at any time and examine any
 4 and all **of** the association's affairs.

5 (22) ~~(24)~~The association does not have liability for losses
 6 occurring before July 1, 1978.

7 (23) By July 1 of 2020 and every year after 2020, the
 8 department shall engage 1 or more independent actuaries to examine
 9 the affairs and records of the association relating to the
 10 association's actuarial assumptions, investment strategy, expenses,
 11 and real liability during the preceding year. The actuarial
 12 examination must be conducted using sound actuarial principles
 13 consistent with the applicable statements of principles and the
 14 code of professional conduct adopted by the Casualty Actuarial
 15 Society. By December 31 of 2020 and every year after 2020, an
 16 actuary conducting an examination under this subsection shall
 17 report its findings to the director of the department and the
 18 senate and house of representatives standing committees dealing
 19 with insurance issues, specifically including a determination of
 20 whether the association is operating with a surplus and the amount
 21 of the surplus.

22 (24) ~~(25)~~As used in this section:

23 (a) "Association" means the catastrophic claims association
 24 created in subsection (1).

25 (b) "Board" means the board of directors of the association
 26 created in subsection (9).

27 (c) "Car" includes a motorcycle but does not include a
 28 historic vehicle.

29 (d) ~~(a)~~"Consumer price index"**Price Index**" means the

1 percentage of change in the ~~consumer price index~~ **Consumer Price**
2 **Index** for all urban consumers in the United States city average for
3 all items for the 24 months ~~prior to~~ **before** October 1 of the year
4 ~~prior to~~ **before** the July 1 effective date of the biennial
5 adjustment under subsection ~~(2)(k)~~ **(2)(n)** as reported by the United
6 States ~~department~~ **Department** of labor, ~~bureau~~ **Labor, Bureau** of
7 ~~labor statistics,~~ **Labor Statistics**, and as certified by the
8 ~~commissioner.~~ **director of the department.**

9 **(e) "Historic vehicle" means a vehicle that is a registered**
10 **historic vehicle under section 803a or 803p of the Michigan vehicle**
11 **code, 1949 PA 300, MCL 257.803a and 257.803p.**

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

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