

HOUSE BILL No. 4389

February 26, 1991, Introduced by Reps. Pitoniak, DeMars, Jonker, Griffin, Dobronski, Weeks, Baade and DeBeaussaert and referred to the Committee on Insurance.

A bill to amend section 3104 of Act No. 218 of the Public Acts of 1956, entitled as amended
"The insurance code of 1956,"
as amended by Act No. 445 of the Public Acts of 1980, being section 500.3104 of the Michigan Compiled Laws; and to add sections 3104a and 3104b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3104 of Act No. 218 of the Public Acts
2 of 1956, as amended by Act No. 445 of the Public Acts of 1980,
3 being section 500.3104 of the Michigan Compiled Laws, is amended
4 and sections 3104a and 3104b are added to read as follows:

5 Sec. 3104. (1) An unincorporated, nonprofit association to
6 be known as the catastrophic claims association, hereinafter
7 referred to as the association, is created. Each insurer engaged
8 in writing insurance coverages ~~which~~ THAT provide the security

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

15 (2) ~~The~~ THROUGH DECEMBER 31, 1991, THE association shall
 16 provide and each member shall accept indemnification for 100% of
 17 the amount of ultimate loss sustained under personal protection
 18 insurance coverages in excess of \$250,000.00 in each loss
 19 occurrence. BEGINNING JANUARY 1, 1992, THE ASSOCIATION SHALL
 20 PROVIDE AND EACH MEMBER SHALL ACCEPT INDEMNIFICATION FOR 100% OF
 21 THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER PERSONAL PROTECTION
 22 INSURANCE COVERAGES IN EXCESS OF THE FOLLOWING AMOUNTS IN EACH
 23 LOSS OCCURRENCE:

24 (A) BEGINNING JANUARY 1, 1992 AND CONTINUING THROUGH
 25 DECEMBER 31, 1992, \$325,000.00.

26 (B) BEGINNING JANUARY 1, 1993 AND CONTINUING THROUGH
 27 DECEMBER 31, 1993, \$400,000.00.

1 (C) BEGINNING JANUARY 1, 1994, \$500,000.00 ADJUSTED ANNUALLY
2 IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.

3 (3) As used in this section: ~~ultimate~~

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

8 (B) "ULTIMATE loss" means the actual loss amounts ~~which~~
9 THAT a member is obligated to pay and ~~which~~ THAT are paid or
10 payable by the member, and shall not include claim expenses. An
11 ultimate loss is incurred by the association on the date ~~which~~
12 THAT the loss occurs.

13 (4) ~~(3)~~ An insurer may withdraw from the association only
14 upon ceasing to write insurance ~~which~~ THAT provides the security
15 required by section 3101(1) in this state.

16 (5) ~~(4)~~ An insurer whose membership in the association has
17 been terminated by withdrawal shall continue to be bound by the
18 plan of operation, and upon withdrawal, all unpaid premiums
19 ~~which~~ THAT have been charged to the withdrawing member shall be
20 payable as of the effective date of the withdrawal.

21 (6) ~~(5)~~ An unsatisfied net liability to the association of
22 an insolvent member shall be assumed by and apportioned among the
23 remaining members of the association as provided in the plan of
24 operation. The association shall have all rights allowed by law
25 on behalf of the remaining members against the estate or funds of
26 the insolvent member for sums due the association.

1 (7) ~~-(6)-When~~ IF a member has been merged or consolidated
2 into another insurer or another insurer has reinsured a member's
3 entire business ~~-which-~~ THAT provides the security required by
4 section 3101(1) in this state, the member and successors in
5 interest of the member shall remain liable for the member's
6 obligations.

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

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

11 (b) Establish procedures by which members shall promptly
12 report to the association each claim ~~-which-~~ THAT, on the basis
13 of the injuries or damages sustained, may reasonably be antici-
14 pated to involve the association ~~if~~ the member is ultimately held
15 legally liable for the injuries or damages. Solely for the pur-
16 pose of reporting claims, the member shall in all instances con-
17 sider itself legally liable for the injuries or damages. The
18 member shall also advise the association of subsequent develop-
19 ments likely to materially affect the interest of the association
20 in the claim.

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

26 (d) In a manner provided for in the plan of operation,
27 calculate and charge to members of the association a total

1 premium sufficient to cover the expected losses and expenses of
2 the association ~~which~~ THAT the association will likely incur
3 during the period for which the premium is applicable. The pre-
4 mium shall include an amount to cover incurred but not reported
5 losses for the period and may be adjusted for any excess or defi-
6 cient premiums from previous periods. Excesses or deficiencies
7 from previous periods may be fully adjusted in a single period or
8 may be adjusted over several periods in a manner provided for in
9 the plan of operation. Each member shall be charged an amount
10 equal to that member's total earned car years of insurance pro-
11 viding the security required by section 3101(1) or 3103(1), or
12 both, written in this state during the period to which the pre-
13 mium applies, multiplied by the average premium per car. The
14 average premium per car shall be the total premium calculated
15 divided by the total earned car years of insurance providing the
16 security required by section 3101(1) or 3103(1) written in this
17 state of all members during the period to which the premium
18 applies. As used in this subdivision, "car" includes a
19 motorcycle.

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

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

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

1 (f) Receive and distribute all sums required by the
2 operation of the association.

3 (g) Establish procedures for reviewing claims procedures and
4 practices of members of the association. If the claims proce-
5 dures or practices of a member are considered inadequate to prop-
6 erly service the liabilities of the association, the association
7 may undertake or may contract with another person, including
8 another member, to adjust or assist in the adjustment of claims
9 for the member on claims ~~which~~ THAT create a potential liabil-
10 ity to the association and may charge the cost of the adjustment
11 to the member.

12 (H) ESTABLISH AND MAINTAIN A DATA BASE AND REQUIRE EACH
13 MEMBER TO FURNISH STATISTICS ON ACCIDENTS THAT, ON THE BASIS OF
14 THE INJURIES OR DAMAGES SUSTAINED, MAY REASONABLY BE ANTICIPATED
15 TO INVOLVE THE ASSOCIATION AND THAT INVOLVE THE USE OF INTOXICAT-
16 ING LIQUOR OR CONTROLLED SUBSTANCES, WHETHER OR NOT SEAT BELTS
17 WERE USED, WHETHER OR NOT THE VEHICLE WAS EQUIPPED WITH AIR BAGS,
18 TYPES OF VEHICLES INVOLVED, THE NUMBER OF PERSONS INVOLVED, AND
19 THE INJURIES SUFFERED BY THE DRIVERS, OCCUPANTS, AND
20 PEDESTRIANS. THE ASSOCIATION SHALL REPORT ANNUALLY TO THE COM-
21 MISSIONER AND THE LEGISLATURE ON THE INFORMATION GATHERED AND THE
22 COST ASSOCIATED WITH INJURIES OR DAMAGES SUSTAINED BY AN ACCIDENT
23 REPORTED PURSUANT TO THIS SUBDIVISION.

24 (9) ~~-(8)-~~ In addition to other powers granted to it by this
25 section, the association may do all of the following:

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

1 liability against the individual members of the association. The
2 association may provide for the indemnification of its members,
3 members of the board of directors of the association, and offi-
4 cers, employees, and other persons lawfully acting on behalf of
5 the association.

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

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

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

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

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

23 (g) Perform other acts not specifically enumerated in this
24 section ~~which~~ THAT are necessary or proper to accomplish the
25 purposes of the association and ~~which~~ THAT are not inconsistent
26 with this section or the plan of operation.

1 (10) ~~(9)~~ A board of directors is created, hereinafter
2 referred to as the board, which shall be responsible for the
3 operation of the association consistent with the plan of opera-
4 tion and this section.

5 (11) ~~(10)~~ The plan of operation shall provide for all of
6 the following:

7 (a) The establishment of necessary facilities.

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

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

12 (C) ~~(d)~~ Procedures to be utilized in charging premiums,
13 including adjustments from excess or deficient premiums from
14 prior periods.

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

17 (E) ~~(f)~~ Reimbursement of each member of the board by the
18 association for actual and necessary expenses incurred on associ-
19 ation business.

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

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

23 (12) ~~(11) Not more than 30 days after the effective date of~~
24 ~~this section, the commissioner shall convene an organizational~~
25 ~~meeting of the board. The board shall be initially composed of 5~~
26 ~~members of the association appointed by the commissioner to serve~~
27 ~~as directors, and the commissioner or a designated representative~~

1 ~~of the commissioner serving as an ex officio member of the board~~
2 ~~without vote. The initial board and each successor~~ THE BOARD
3 SHALL CONSIST OF 5 DIRECTORS AND THE COMMISSIONER. EACH board
4 shall include members which would contribute a total of not less
5 than 40% of the total premium calculated pursuant to subsection
6 ~~(7)(d)~~ (8)(D). Each director AND THE COMMISSIONER shall be
7 entitled to 1 vote. The initial term of office of a director
8 shall be 2 years.

9 (13) ~~(12)~~ As part of the plan of operation, the board
10 shall adopt rules providing for the composition and term of suc-
11 cessor boards to the initial board, consistent with the member-
12 ship composition requirements in ~~subsections (11) and (13)~~
13 SUBSECTION (12). Terms of the directors shall be staggered so
14 that the terms of all the directors do not expire at the same
15 time and so that a director does not serve a term of more than 4
16 years.

17 ~~(13) The board shall consist of 5 directors and the commis-~~
18 ~~sioner shall be an ex officio member of the board without vote.~~

19 (14) Each director shall be appointed by the commissioner
20 and shall serve until that member's successor is selected and
21 qualified. The chairperson of the board shall be elected by the
22 board. A vacancy on the board shall be filled by the commis-
23 sioner consistent with the plan of operation.

24 (15) After the board is appointed, the board shall meet as
25 often as the chairperson, the commissioner, or the plan of opera-
26 tion shall require, or at the request of any 3 members of the

1 board. The chairperson shall retain the right to vote on all
2 issues. Four members of the board shall constitute a quorum.

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

6 (17) Not more than 60 days after the initial organizational
7 meeting of the board, the board shall submit to the commissioner
8 for approval a proposed plan of operation consistent with the
9 objectives and provisions of this section ~~, which shall provide~~
10 AND THAT PROVIDES for the economical, fair, and nondiscriminatory
11 administration of the association and for the prompt and effi-
12 cient provision of indemnity. If a plan is not submitted within
13 this 60-day period, then the commissioner, after consultation
14 with the board, shall formulate and place into effect a plan con-
15 sistent with this section.

16 (18) The plan of operation, unless approved sooner in writ-
17 ing, shall be considered to meet the requirements of this section
18 if it is not disapproved by written order of the commissioner
19 within 30 days after the date of its submission. Before disap-
20 proval of all or any part of the proposed plan of operation, the
21 commissioner shall notify the board in what respect the plan of
22 operation fails to meet the requirements and objectives of this
23 section. If the board fails to submit a revised plan of opera-
24 tion ~~which~~ THAT meets the requirements and objectives of this
25 section within the 30-day period, the commissioner shall enter an
26 order accordingly and shall immediately formulate and place into

1 effect a plan consistent with the requirements and objectives of
2 this section.

3 (19) The proposed plan of operation or amendments to the
4 plan of operation shall be subject to majority approval by the
5 board, ratified by a majority of the membership, ~~having a vote,~~
6 with voting rights being apportioned according to the premiums
7 charged in subsection ~~(7)(d)~~ (8)(D) and shall be subject to
8 approval by the commissioner.

9 (20) Upon approval by the commissioner and ratification by
10 the members of the plan submitted, or upon the promulgation of a
11 plan by the commissioner, each insurer authorized to write insur-
12 ance providing the security required by section 3101(1) OR
13 3103(1) in this state, as ~~defined~~ PROVIDED in this section,
14 shall be bound by and shall formally subscribe to and participate
15 in the plan approved as a condition of maintaining its authority
16 to transact insurance in this state.

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

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

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

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

4 SEC. 3104A. IF AN AUTOMOBILE INSURER LISTS THE COSTS OF THE
5 MICHIGAN CATASTROPHIC CLAIMS COVERAGE ON A DECLARATION SHEET, THE
6 DECLARATION SHEET SHALL INCLUDE THE FOLLOWING EXPLANATION FOR
7 THIS COVERAGE:

8 THIS CHARGE IS FOR UNLIMITED MEDICAL BENEFITS DUE TO AN
9 AUTOMOBILE ACCIDENT FOR COSTS INCURRED ABOVE THE FOLLOWING
10 AMOUNTS:

11 (A) BEGINNING JANUARY 1, 1992 AND CONTINUING THROUGH
12 DECEMBER 31, 1992, \$325,000.00.

13 (B) BEGINNING JANUARY 1, 1993 AND CONTINUING THROUGH
14 DECEMBER 31, 1993, \$400,000.00.

15 (C) BEGINNING JANUARY 1, 1994, \$500,000.00 ADJUSTED ANNUALLY
16 IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.

17 SEC. 3104B. (1) AS USED IN THIS SECTION:

18 (A) "HEALTH CARE FACILITY" MEANS ALL OF THE FOLLOWING:

19 (i) A FACILITY OR AGENCY LICENSED OR AUTHORIZED UNDER PARTS
20 201 TO 217 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC
21 ACTS OF 1978, BEING SECTIONS 333.20101 TO 333.21799E OF THE
22 MICHIGAN COMPILED LAWS, OR A LICENSED PART THEREOF.

23 (ii) A MENTAL HOSPITAL, PSYCHIATRIC HOSPITAL, PSYCHIATRIC
24 UNIT, OR MENTAL RETARDATION FACILITY OPERATED BY THE DEPARTMENT
25 OF MENTAL HEALTH OR CERTIFIED OR LICENSED UNDER THE MENTAL HEALTH
26 CODE, ACT NO. 258 OF THE PUBLIC ACTS OF 1974, BEING SECTIONS
27 330.1001 TO 330.2106 OF THE MICHIGAN COMPILED LAWS.

1 (iii) A FACILITY PROVIDING OUTPATIENT PHYSICAL THERAPY
2 SERVICES, INCLUDING SPEECH PATHOLOGY SERVICES.

3 (iv) A KIDNEY DISEASE TREATMENT CENTER, INCLUDING A FREE-
4 STANDING HEMODIALYSIS UNIT.

5 (v) AN ORGANIZED AMBULATORY HEALTH CARE FACILITY.

6 (vi) A TERTIARY HEALTH CARE SERVICE FACILITY.

7 (vii) A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED UNDER
8 PARTS 61 TO 65 OF ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING
9 SECTIONS 333.6101 TO 333.6523 OF THE MICHIGAN COMPILED LAWS.

10 (viii) AN OUTPATIENT PSYCHIATRIC CLINIC.

11 (ix) A HOME HEALTH AGENCY.

12 (B) "HEALTH CARE PROVIDER" MEANS A PERSON LICENSED, CERTI-
13 FIED, OR REGISTERED UNDER PARTS 61 TO 65 OR 161 TO 182 OF ACT
14 NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.6101 TO
15 333.6523 AND 333.16101 TO 333.18237 OF THE MICHIGAN COMPILED
16 LAWS.

17 (2) THERE IS CREATED A POST-ACUTE CARE TASK FORCE WITHIN THE
18 DEPARTMENT OF LICENSING AND REGULATION. THE POST-ACUTE CARE TASK
19 FORCE SHALL CONSIST OF THE BOARD OF DIRECTORS OF THE CATASTROPHIC
20 CLAIMS ASSOCIATION, THE MANAGER OF THE CATASTROPHIC CLAIMS ASSO-
21 CIATION, AND THE FOLLOWING 12 MEMBERS APPOINTED BY THE
22 COMMISSIONER:

23 (A) THREE INSURERS TRANSACTING AUTOMOBILE INSURANCE IN THIS
24 STATE.

25 (B) THREE HEALTH CARE PROVIDERS PROVIDING POST-ACUTE CARE TO
26 CATASTROPHICALLY INJURED PERSONS.

1 (C) ONE REPRESENTATIVE FROM A HEALTH CARE FACILITY THAT
2 PROVIDES POST-ACUTE CARE TO CATASTROPHICALLY INJURED PERSONS.

3 (D) ONE PROVIDER OF REHABILITATION SERVICES IN THE AREA OF
4 CATASTROPHIC CARE.

5 (E) TWO MEMBERS OF THE GENERAL PUBLIC WITH KNOWLEDGE IN THE
6 AREA OF CARE FOR CATASTROPHICALLY INJURED PERSONS.

7 (F) ONE ATTORNEY WITH KNOWLEDGE IN LEGAL MATTERS PERTAINING
8 TO THIS CHAPTER AND WHO REGULARLY REPRESENTS INJURED AUTOMOBILE
9 ACCIDENT VICTIMS.

10 (G) ONE REPRESENTATIVE FROM A PROVIDER OF CASE MANAGEMENT
11 SERVICES FOR CATASTROPHICALLY INJURED PERSONS.

12 (3) THE COMMISSIONER OR HIS OR HER DESIGNEE SHALL CHAIR THE
13 POST-ACUTE CARE TASK FORCE.

14 (4) THE POST-ACUTE CARE TASK FORCE SHALL DEVELOP STANDARDS
15 FOR CASE MANAGEMENT OF POST-ACUTE CARE FOR AUTOMOBILE ACCIDENT
16 VICTIMS AND SHALL MAKE RECOMMENDATIONS BY MARCH 1, 1992 ON PRO-
17 VIDING APPROPRIATE POST-ACUTE CARE AT A REDUCED COST.

18 (5) THE COMMISSIONER SHALL PROMULGATE RULES PURSUANT TO THE
19 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC
20 ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN
21 COMPILED LAWS, ESTABLISHING STANDARDS FOR CASE MANAGEMENT OF
22 POST-ACUTE CARE FOR AUTOMOBILE ACCIDENT VICTIMS AND PROVISIONS
23 FOR ASSURING APPROPRIATE POST-ACUTE CARE AT A REDUCED COST. THE
24 COMMISSIONER SHALL SUBMIT THE PROPOSED RULES FOR PUBLIC HEARING
25 PURSUANT TO ACT NO. 306 OF THE PUBLIC ACTS OF 1969 BY JUNE 1,
26 1992.