

SENATE BILL No. 442

July 25, 1991, Introduced by Senators N. SMITH and EHLERS
and referred to the Committee on Commerce.

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 sec-
tion 500.3104 of the Michigan Compiled Laws.

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 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
9 required by section 3101(1) within this state, as a condition of

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

14 (2) The association shall provide and each member shall
15 accept indemnification for 100% of the amount of ultimate loss
16 sustained under personal protection insurance coverages in excess
17 of ~~\$250,000.00~~ \$350,000.00 in each loss occurrence. As used in
18 this section, "ultimate loss" means the actual loss amounts
19 ~~which~~ THAT a member is obligated to pay and ~~which~~ THAT are
20 paid or payable by the member, and shall not include claim
21 expenses. An ultimate loss is incurred by the association on the
22 date ~~which~~ THAT the loss occurs.

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

26 (4) An insurer whose membership in the association has been
27 terminated by withdrawal shall continue to be bound by the plan

1 of operation, and upon withdrawal, all unpaid premiums ~~which~~
2 THAT have been charged to the withdrawing member shall be payable
3 as of the effective date of the withdrawal.

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

10 (6) ~~When~~ IF a member has been merged or consolidated into
11 another insurer or another insurer has reinsured a member's
12 entire business ~~which~~ THAT provides the security required by
13 section 3101(1) in this state, the member and successors in
14 interest of the member shall remain liable for the member's
15 obligations.

16 (7) The association shall do all of the following on behalf
17 of the members of the association:

18 (a) Assume 100% of all liability as provided in
19 subsection (2).

20 (b) Establish procedures by which members shall promptly
21 report to the association each claim ~~which~~ THAT, on the basis
22 of the injuries or damages sustained, may reasonably be antici-
23 pated to involve the association if the member is ultimately held
24 legally liable for the injuries or damages. Solely for the pur-
25 pose of reporting claims, the member shall in all instances con-
26 sider itself legally liable for the injuries or damages. The
27 member shall also advise the association of subsequent

1 developments likely to materially affect the interest of the
2 association in the claim.

3 (c) Maintain relevant loss and expense data relative to all
4 liabilities of the association and require each member to furnish
5 statistics, in connection with liabilities of the association, at
6 the times and in the form and detail as may be required by the
7 plan of operation.

8 (d) In a manner provided for in the plan of operation, cal-
9 culate and charge to members of the association a total premium
10 sufficient to cover the expected losses and expenses of the asso-
11 ciation ~~which~~ THAT the association will likely incur during the
12 period for which the premium is applicable. The premium shall
13 include an amount to cover incurred but not reported losses for
14 the period and may be adjusted for any excess or deficient premi-
15 ums from previous periods. Excesses or deficiencies from previ-
16 ous periods may be fully adjusted in a single period or may be
17 adjusted over several periods in a manner provided for in the
18 plan of operation. Each member shall be charged an amount equal
19 to that member's total earned car years of insurance providing
20 the security required by section 3101(1) or 3103(1), or both,
21 written in this state during the period to which the premium
22 applies, multiplied by the average premium per car. The average
23 premium per car shall be the total premium calculated divided by
24 the total earned car years of insurance providing the security
25 required by section 3101(1) or 3103(1) written in this state of
26 all members during the period to which the premium applies. As
27 used in this subdivision, "car" includes a motorcycle.

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 ~~which~~ THAT create a potential liabil-
17 ity to the association and may charge the cost of the adjustment
18 to the 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.

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 ~~which~~ THAT are necessary or proper to accomplish the
20 purposes of the association and ~~which~~ THAT are not inconsistent
21 with this section 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:

(a) The establishment of necessary facilities.

(b) The management and operation of the association.

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

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

(D) ~~(e)~~ Procedures governing the actual payment of premiums to the association.

(E) ~~(f)~~ Reimbursement of each member of the board by the association for actual and necessary expenses incurred on association business.

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

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

~~(11) Not more than 30 days after the effective date of this section, the commissioner shall convene an organizational meeting of the board. The board shall be initially composed of 5 members of the association appointed by the commissioner to serve as directors, and the commissioner or a designated representative of the commissioner serving as an ex officio member of the board without vote. The initial board and each successor~~ THE BOARD SHALL CONSIST OF 5 DIRECTORS AND THE COMMISSIONER WHO SHALL SERVE AS AN EX OFFICIO MEMBER OF THE BOARD WITHOUT VOTE. EACH board shall include members which would contribute a total of not less than 40% of the total premium calculated pursuant to subsection

1 (7)(d). Each director shall be entitled to 1 vote. The initial
2 term of office of a director shall be 2 years.

3 (12) As part of the plan of operation, the board shall adopt
4 rules providing for the composition and term of successor boards
5 to the initial board, consistent with the membership composition
6 requirements in ~~subsections (11) and (13)~~ SUBSECTION (11).

7 Terms of the directors shall be staggered so that the terms of
8 all the directors do not expire at the same time and so that a
9 director does not serve a term of more than 4 years.

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

12 (13) ~~(14)~~ Each director shall be appointed by the commis-
13 sioner and shall serve until that member's successor is selected
14 and qualified. The chairperson of the board shall be elected by
15 the board. A vacancy on the board shall be filled by the commis-
16 sioner consistent with the plan of operation.

17 (14) ~~(15)~~ After the board is appointed, the board shall
18 meet as often as the chairperson, the commissioner, or the plan
19 of operation shall require, or at the request of any 3 members of
20 the board. The chairperson shall retain the right to vote on all
21 issues. Four members of the board shall constitute a quorum.

22 (15) ~~(16)~~ An annual report of the operations of the asso-
23 ciation in a form and detail as may be determined by the board
24 shall be furnished to each member.

25 (16) ~~(17)~~ Not more than 60 days after the initial organi-
26 zational meeting of the board, the board shall submit to the
27 commissioner for approval a proposed plan of operation consistent

1 with the objectives and provisions of this section ~~which shall~~
2 ~~provide~~ AND THAT PROVIDES for the economical, fair, and nondis-
3 criminatory administration of the association and for the prompt
4 and efficient provision of indemnity. If a plan is not submitted
5 within this 60-day period, then the commissioner, after consulta-
6 tion with the board, shall formulate and place into effect a plan
7 consistent with this section.

8 (17) ~~(18)~~ The plan of operation, unless approved sooner in
9 writing, shall be considered to meet the requirements of this
10 section if it is not disapproved by written order of the commis-
11 sioner within 30 days after the date of its submission. Before
12 disapproval of all or any part of the proposed plan of operation,
13 the commissioner shall notify the board in what respect the plan
14 of operation fails to meet the requirements and objectives of
15 this section. If the board fails to submit a revised plan of
16 operation ~~which~~ THAT meets the requirements and objectives of
17 this section within the 30-day period, the commissioner shall
18 enter an order accordingly and shall immediately formulate and
19 place into effect a plan consistent with the requirements and
20 objectives of this section.

21 (18) ~~(19)~~ The proposed plan of operation or amendments to
22 the plan of operation shall be subject to majority approval by
23 the board, ratified by a majority of the membership having a
24 vote, with voting rights being apportioned according to the pre-
25 miums charged in subsection (7)(d) and shall be subject to
26 approval by the commissioner.

1 (19) ~~—(20)—~~ Upon approval by the commissioner and
2 ratification by the members of the plan submitted, or upon the
3 promulgation of a plan by the commissioner, each insurer autho-
4 rized to write insurance providing the security required by sec-
5 tion 3101(1) OR 3103(1) in this state, as ~~defined~~ PROVIDED in
6 this section, shall be bound by and shall formally subscribe to
7 and participate in the plan approved as a condition of maintain-
8 ing its authority to transact insurance in this state.

9 (20) ~~—(21)—~~ The association shall be subject to all the
10 reporting, loss reserve, and investment requirements of the com-
11 missioner to the same extent as would a member of the
12 association.

13 (21) ~~—(22)—~~ Premiums charged members by the association
14 shall be recognized in the rate-making procedures for insurance
15 rates in the same manner that expenses and premium taxes are
16 recognized.

17 (22) ~~—(23)—~~ The commissioner or an authorized representative
18 of the commissioner may visit the association at any time and
19 examine any and all the association's affairs.

20 (23) ~~—(24)— This section shall take effect on July 1,~~
21 ~~1978.~~ The association shall not have liability for losses occur-
22 ring before ~~the effective date of this section~~ JULY 1, 1978.