Act No. 143
Public Acts of 1993
Approved by the Governor
August 6, 1993
Filed with the Secretary of State
August 6, 1993

**STATE OF MICHIGAN**
**87TH LEGISLATURE**
**REGULAR SESSION OF 1993**

**Introduced by Reps. Griffin, Martin, Baade, Llewellyn, Hoffman, Byrum, Varga, Porreca, Middaugh, DeMars, Oxender, Agee, Kukuk, Wetters, Bobier, Harder, Dalman, Shepich, Nye, Stallworth, DeLange, Weeks, Brackenridge, Bandstra, Bender, Gnodtke, Hammerstrom, Horton, Richard A. Young, Randall, Middleton, Alley, Voorhees, Fitzgerald, Shugars, London, Gernaat, Olshove, Stille, Sikkema, McBryde, Dolan, Kaza, Hill, Goschka, McNutt, Lowe, Bullard, Vorva, Jamian, Rhead, Walberg, Cropsey, Crissman, Galloway, McManus, Bodem, Johnson, Bankes, Gilmer, Bryant, Dobb, Munsell, Jaye, Gustafson and Rocca**

# ENROLLED HOUSE BILL No. 4156

AN ACT to amend the title and sections 2103, 2110, 2111, 2118, 2120, 3037, 3101, 3101a, 3104, 3107, 3109a, 3115, 3116, 3135, 3142, 3145, 3157, 3172, 3320, 3330, 3340, 3355, and 7911 of Act No. 218 of the Public Acts of 1956, entitled as amended "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the

purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act," section 2103 as amended by Act No. 305 of the Public Acts of 1990, sections 2111 and 3107 as amended by Act No. 191 of the Public Acts of 1991, section 2118 as amended by Act No. 43 of the Public Acts of 1988, section 2120 as amended by Act No. 350 of the Public Acts of 1984, sections 3037 and 3320 as amended and section 3101a as added by Act No. 461 of the Public Acts of 1980, section 3101 as amended by Act No. 126 of the Public Acts of 1988, section 3104 as amended by Act No. 445 of the Public Acts of 1980, section 3172 as amended by Act No. 426 of the Public Acts of 1984, section 3340 as amended by Act No. 10 of the Public Acts of 1986, and section 7911 as amended by Act No. 137 of the Public Acts of 1990, being sections 500.2103, 500.2110, 500.2111, 500.2118, 500.2120, 500.3037, 500.3101, 500.3101a, 500.3104, 500.3107, 500.3109a, 500.3115, 500.3116, 500.3135, 500.3142, 500.3145, 500.3157, 500.3172, 500.3320, 500.3330, 500.3340, 500.3355, and 500.7911 of the Michigan Compiled Laws; and to add sections 2106a, 2106b, 2106c, 2109a, 2110a, 2111b, 2111f, 2111g, 2111h, 2112a, 2115a, 2115b, 2115c, 2115d, 2115e, 2134, 2136, 2138, 2140, 3015, 3103a, 3104a, 3104b, 3118, and 3172a and chapter 32a.

*The People of the State of Michigan enact:*

Section 1. The title and sections 2103, 2110, 2111, 2118, 2120, 3037, 3101, 3101a, 3104, 3107, 3109a, 3115, 3116, 3135, 3142, 3145, 3157, 3172, 3320, 3330, 3340, 3355, and 7911 of Act No. 218 of the Public Acts of 1956, section 2103 as amended by Act No. 305 of the Public Acts of 1990, sections 2111 and 3107 as amended by Act No. 191 of the Public Acts of 1991, section 2118 as amended by Act No. 43 of the Public Acts of 1988, section 2120 as amended by Act No. 350 of the Public Acts of 1984, sections 3037 and 3320 as amended and section 3101a as added by Act No. 461 of the Public Acts of 1980, section 3101 as amended by Act No. 126 of the Public Acts of 1988, section 3104 as amended by Act No. 445 of the Public Acts of 1980, section 3172 as amended by Act No. 426 of the Public Acts of 1984, section 3340 as amended by Act No. 10 of the Public Acts of 1986, and section 7911 as amended by Act No. 137 of the Public Acts of 1990, being sections 500.2103, 500.2110, 500.2111, 500.2118, 500.2120, 500.3037, 500.3101, 500.3101a, 500.3104, 500.3107, 500.3109a, 500.3115, 500.3116, 500.3135, 500.3142, 500.3145, 500.3157, 500.3172, 500.3320, 500.3330, 500.3340, 500.3355, and 500.7911 of the Michigan Compiled Laws, are amended and sections 2106a, 2106b, 2106c, 2109a, 2110a, 2111b, 2111f, 2111g, 2111h, 2112a, 2115a, 2115b, 2115c, 2115d, 2115e, 2134, 2136, 2138, 2140, 3015, 3103a, 3104a, 3104b, 3118, and 3172a and chapter 32a are added to read as follows:

TITLE

An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state, to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates, and to provide for certain powers and duties, upon certain persons, as they affect the continued availability and affordability of that insurance; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain

assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain persons; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide an appropriation; to repeal certain acts and parts of acts; to repeal certain acts and parts of acts on specific dates; to repeal certain parts of this act on specific dates; and to provide penalties for the violation of this act.

Sec. 2103. (1) "Eligible person", for automobile insurance, means a person who is an owner or registrant of an automobile registered or to be registered in this state or who holds a valid Michigan license to operate a motor vehicle, but does not include any of the following:

(a) A person who is not required to maintain security pursuant to section 3101, unless the person intends to reside in this state for 30 days or more and makes a written statement of that intention on a form approved by the commissioner.

(b) A person whose license to operate a vehicle is under suspension or revocation.

(c) A person who has been convicted within the immediately preceding 5-year period of fraud or intent to defraud involving an insurance claim or an application for insurance; or an individual who has been successfully denied, within the immediately preceding 5-year period, payment by an insurer of a claim in excess of $1,000.00 under an automobile insurance policy, if there is evidence of fraud or intent to defraud involving an insurance claim or application.

(d) A person who, during the immediately preceding 3-year period, has been convicted under, or who has been subject to an order of disposition of the probate court for a violation of, any of the following:

(*i*) Section 324 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, as amended, being section 750.324 of the Michigan Compiled Laws; section 1 of Act No. 214 of the Public Acts of 1931, being section 752.191 of the Michigan Compiled Laws; or under any other law of this state the violation of which constitutes a felony resulting from the operation of a motor vehicle.

(*ii*) Section 625 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being section 257.625 of the Michigan Compiled Laws.

(*iii*) Section 617, 617a, 618, or 619 of Act No. 300 of the Public Acts of 1949, as amended, being sections 257.617, 257.617a, 257.618, and 257.619 of the Michigan Compiled Laws.

(*iv*) Section 626 of Act No. 300 of the Public Acts of 1949, as amended, being section 257.626 of the Michigan Compiled Laws; or for a similar violation under the laws of any other state or a municipality within or without this state.

(e) A person whose vehicle insured or to be insured under the policy fails to meet the motor vehicle safety requirements of sections 683 to 711 of Act No. 300 of the Public Acts of 1949, as amended, being sections 257.683 to 257.711 of the Michigan Compiled Laws.

(f) A person whose policy of automobile insurance has been canceled because of nonpayment of premium or financed premium within the immediately preceding 2-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy.

(g) A person who fails to obtain or maintain membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues, charges, or other conditions for membership are applied uniformly throughout this state, are not expressed as a percentage of premium, and do not vary with respect to the rating classification of the member except for the purpose of offering a membership fee to family units. Membership fees may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees.

(h) A person whose driving record for the 3-year period immediately preceding application for or renewal of a policy, has, pursuant to section 2119a, an accumulation of more than 6 insurance eligibility points.

(2) "Eligible person", for home insurance, means a person who is the owner-occupant or tenant of a dwelling of any of the following types: a house, a condominium unit, a cooperative unit, a room, or an apartment; or a person who is the owner-occupant of a multiple unit dwelling of not more than 4 residential units. Eligible person does not include any of the following:

(a) A person who has been convicted, in the immediately preceding 5-year period, of 1 or more of the following:

(*i*) Arson, or conspiracy to commit arson.

(*ii*) A crime under sections 72 to 77, 112, 211a, 377a, 377b, or 380 of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.72 to 750.77, 750.112, 750.211a, 750.377a, 750.377b, and 750.380 of the Michigan Compiled Laws.

(*iii*) A crime under section 92, 151, 157b, or 218 of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.92, 750.151, 750.157b, and 750.218 of the Michigan Compiled Laws, based upon a crime described in subparagraph (*ii*) committed by or on behalf of the person.

(b) A person who has been successfully denied, within the immediately preceding 5-year period, payment by an insurer of a claim under a home insurance policy in excess of $2,000.00, based on evidence of arson, conspiracy to commit arson, misrepresentation, fraud, or conspiracy to commit fraud, committed by or on behalf of the person, if the amount of the denied claim was greater than any of the following:

(*i*) For a claim under a repair cost policy, 15% of the amount of insurance in force.

(*ii*) For a claim under a replacement cost policy, 10% of the amount of insurance in force.

(c) A person who insures or seeks to insure a dwelling that is being used for an illegal or demonstrably hazardous purpose.

(d) A person who refuses to purchase an amount of insurance equal to at least 80% of the replacement cost of the property insured or to be insured under a replacement cost policy.

(e) A person who refuses to purchase an amount of insurance equal to at least 100% of the market value of the property insured or to be insured under a repair cost policy.

(f) A person who refuses to purchase an amount of insurance equal to at least 100% of the actual cash value of the property insured or to be insured under a tenant or renter's home insurance policy.

(g) A person whose policy of home insurance has been canceled because of nonpayment of premium within the immediately preceding 2-year period, unless the premium due on the policy is paid in full before issuance or renewal of the policy.

(h) A person who insures or seeks to insure a dwelling, if the insured value is not any of the following:

(*i*) For a repair cost policy, at least $7,500.00.

(*ii*) For a replacement policy, at least $15,000.00 or another amount that the commissioner may establish biennially on and after January 1, 1983, pursuant to rules promulgated by the commissioner under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, based upon changes in applicable construction cost indices.

(i) A person who insures or seeks to insure a dwelling that does not meet minimum standards of insurability as established by rules promulgated by the commissioner pursuant to Act No. 306 of the Public Acts of 1969, as amended.

(j) A person whose real property taxes with respect to the dwelling insured or to be insured have been and are delinquent for 2 or more years at the time of renewal of, or application for, home insurance.

(k) A person who has failed to procure or maintain membership in a club, group, or organization, if membership is a uniform requirement of the insurer and if the dues, charges, or other conditions for membership are applied uniformly throughout this state, are not expressed as a percentage of premium, and do not vary with respect to the rating classification of the member except for the purpose of offering a membership fee to family units. Membership fees may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees.

(3) "Home insurance" means any of the following, but does not include insurance intended to insure commercial, industrial, professional, or business property, obligations, or liabilities:

(a) Fire insurance for an insured's dwelling of a type described in subsection (2).

(b) If contained in or indorsed to a fire insurance policy providing insurance for the insured's residence, other insurance intended primarily to insure nonbusiness property, obligations, and liabilities.

(c) Other insurance coverages for an insured's residence as prescribed by rule promulgated by the commissioner pursuant to Act No. 306 of the Public Acts of 1969, as amended. A rule proposed for promulgation by the commissioner pursuant to this section shall be transmitted in advance to each member of the standing committee in the house and in the senate that has jurisdiction over insurance.

(4) "Insurance eligibility points" means all of the following:

(a) Points calculated, according to the following schedule, for convictions, determinations of responsibility for civil infractions, or findings of responsibility in probate court:

(*i*) For a violation of a lawful speed limit by more than 15 miles per hour, or careless driving, 4 points.

(*ii*) For a violation of a lawful speed limit by more than 10 miles per hour, but less than 16 miles per hour, 3 points.

(*iii*) For a violation of a lawful speed limit by 10 miles per hour or less, 2 points.

(*iv*) For a violation of a speed limit by 15 miles per hour or less on a roadway which had a lawfully posted maximum speed of 70 miles per hour as of January 1, 1974, 2 points.

(*v*) For all other moving violations pertaining to the operation of motor vehicles, 2 points.

(b) Points calculated, according to the following schedule, for determinations that the person was substantially at-fault, as defined in section 2104(4):

(*i*) For the first substantially at-fault accident, 3 points.

(*ii*) For the second and each subsequent substantially at-fault accident, 4 points.

(5) "Insurer" means an insurer authorized to transact in this state the kind or combination of kinds of insurance constituting automobile insurance or home insurance, as defined in this chapter.

Sec. 2106a. (1) The commissioner shall develop by October 1, 1993 a standard rate filing form for private passenger nonfleet automobile insurance. By December 1, 1993, each automobile insurer shall use the standard rate filing form when filing a rate with the commissioner for private passenger nonfleet automobile insurance.

(2) With each rate filing, an automobile insurer shall complete and submit to the commissioner a buyer's guide rate survey on a form prepared by the commissioner that the commissioner can use in complying with section 2115c.

Sec. 2106b. (1) The commissioner shall develop by October 1, 1993 a standard application form in plain English for private passenger nonfleet automobile insurance. The application form shall list what coverages are mandatory and what are not and shall indicate how to obtain consumer assistance materials. By December 1, 1993, each automobile insurer shall accept the standard application form for private passenger nonfleet automobile insurance. After April 1, 1994, an automobile insurer shall use an application form substantially similar to the standard application form for private passenger nonfleet automobile insurance.

(2) An electronically or electromagnetically transmitted facsimile of the automobile insurance application form may be sent to an applicant. A signed electronically or electromagnetically transmitted facsimile of the automobile insurance application form shall be treated the same as an original signed automobile insurance application form.

(3) The commissioner shall have copies of the standard application form available to the general public and shall provide copies of the standard application form to the secretary of state branch offices for distribution to the public.

(4) When applying for coverage through an insurer exclusively represented by duly licensed agents, members of the general public shall submit either the standard application form or the insurer's own application form to any insurance agent appointed by that insurer.

Sec. 2106c. (1) The commissioner shall develop by October 1, 1993 a model declarations page in plain English for private passenger nonfleet automobile insurance. By December 1, 1993, each automobile insurer shall use a declarations page substantially similar to the model declarations page developed by the commissioner for private passenger nonfleet automobile insurance.

(2) The commissioner shall provide that the model declarations page contain at least the following notice concerning comprehensive and collision coverages:

Warning. Comprehensive and collision coverages reimburse only for the current value of your motor vehicle less your deductible.

(3) If an automobile insurer lists assessments authorized or permitted by law on its declaration page, the insurer shall include only the actual cost of the assessments and shall not include or list any administrative or other fees within the assessments.

Sec. 2109a. (1) As used in this section:

(a) "Loss ratio" means incurred losses and loss adjustment expenses expressed as a percentage of earned premiums.

(b) "Substantially uniform" means the absence of significant variations among loss ratios.

(2) By not later than 120 days after the effective date of the amendatory act that added this section, an insurer's automobile insurance rates for all classes and coverages for each of its rating territories shall be established in a manner that can reasonably be anticipated to produce loss ratios that are substantially uniform on an average basis over a 3-year period.

Sec. 2110. (1) In developing and evaluating rates pursuant to the standards prescribed in sections 2109 and 2109a, due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any; to a reasonable margin for underwriting profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to past and prospective expenses, both countrywide and those specially applicable to this state exclusive of assessments under this act; to assessments under this act; to underwriting practice and judgment; and to all other relevant factors within and

outside this state. In determining the reasonableness of rates for automobile insurance, consideration shall be given to expenses, investment income earned on loss reserves, investment income earned on unearned premium reserves, and investment income earned on that portion of capital and surplus attributable to automobile insurance, as well as the factors used to determine the amount of the reserves.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of the insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. The classifications shall measure differences in losses, expenses, or both.

Sec. 2110a. (1) By not later than 300 days after the effective date of the amendatory act that added this section, an automobile insurer shall establish and maintain a premium discount plan for personal protection insurance that provides for a premium discount if a motor vehicle has 1 or more of the following safety features:

(a) Antilacerative glass.

(b) Air bags.

(c) Antilock brakes.

(d) Enhanced sidewall protection.

(e) Bumpers that exceed a collision standard of 5 miles per hour.

(f) Other passive safety features that reduce frequency or severity of collisions or injuries as determined by the insurer and approved by the commissioner.

(2) A premium discount plan required under this section may require the insured individual to certify in writing that he or she has 1 or more of the safety features listed in subsection (1) as a condition to receiving the premium discount. If an insured receives a premium discount after providing this certification and sustains a loss while operating that motor vehicle and it does not have the safety features that were certified to, an insurer may impose a $500.00 deductible with respect to that loss in addition to any deductible provided in the policy and may subsequently deny to the insured the right to participate in any premium discount plan established by the insurer pursuant to this section for a period of 12 months.

Sec. 2111. (1) Notwithstanding any provision of this act and this chapter to the contrary, classifications and territorial base rates used by any insurer in this state with respect to automobile insurance or home insurance shall conform to the applicable requirements of this section.

(2) Classifications established pursuant to this section for automobile insurance shall be based only upon 1 or more of the following factors, which shall be applied by an insurer on a uniform basis throughout the state:

(a) With respect to all automobile insurance coverages:

(*i*) The age of the driver.

(*ii*) The length of driving experience.

(*iii*) The number of years licensed to operate a motor vehicle.

(*iv*) Driver primacy, based upon the proportionate use of each vehicle insured under the policy by individual drivers insured or to be insured under the policy.

(*v*) Average miles driven weekly, annually, or both.

(*vi*) Type of use, such as business, farm, or pleasure use.

(*vii*) Vehicle design and equipment characteristics including standard features and options, grouped together as much as practicable by vehicle make and model, that bear upon the ability of the vehicle to protect passengers from injury or to avoid accidents.

(*viii*) Daily or weekly commuting mileage.

(*ix*) Number of cars insured by the insurer or number of licensed operators in the household. However, number of licensed operators shall not be used as an indirect measure of marital status.

(*x*) Amount of insurance.

(*xi*) Deductibles.

(*xii*) Characteristics of vehicle usage that have a demonstrable relationship to severity or frequency of accidents. These characteristics may include conditions of customary or frequent vehicle use such as time of day, density of traffic and other driving conditions, and accident frequency and severity in use zones or areas where the insured vehicle is customarily or frequently driven by the insured or members of the insured's household.

(b) In addition to the factors prescribed in subdivision (a), with respect to personal protection insurance coverage:

(*i*) Earned income.

(*ii*) Number of dependents of income earners insured under the policy.

(*iii*) Coordination of benefits.

(*iv*) Use of a safety belt.

(c) In addition to the factors prescribed in subdivision (a), with respect to collision and comprehensive coverages:

(*i*) The anticipated cost of vehicle repairs or replacement, which may be measured by age, price, cost new, or value of the insured automobile, and other factors directly relating to that anticipated cost.

(*ii*) Vehicle make and model.

(*iii*) Vehicle design characteristics related to vehicle damageability.

(*iv*) Vehicle design and equipment characteristics including standard features and options by vehicle make and model and that bear upon the vehicle's ability to avoid accidents, the vehicle's resistance to damage, and the cost of repair of a damaged vehicle. On and after January 1, 1994, an insurer is required to base its rating system for collision coverage upon and to quote collision coverage upon the characteristics in this subparagraph.

(*v*) Vehicle characteristics relating to automobile theft prevention devices.

(d) In addition to the factors prescribed in subdivisions (a) and (c) with respect to comprehensive coverages only:

(*i*) The presence of passive theft prevention devices on the insured vehicle.

(*ii*) Conditions under which the vehicle is garaged or parked that relate to the risk of loss from hazards insured against.

(e) With respect to all automobile insurance coverage other than comprehensive, successful completion by the individual driver or drivers insured under the policy of an accident prevention education course that meets the following criteria:

(*i*) The course shall include a minimum of 8 hours of classroom instruction.

(*ii*) The course shall include, but not be limited to, a review of all of the following:

(A) The effects of aging on driving behavior.

(B) The shapes, colors, and types of road signs.

(C) The effects of alcohol and medication on driving.

(D) The laws relating to the proper use of a motor vehicle.

(E) Accident prevention measures.

(F) The benefits of safety belts and child restraints.

(G) Major driving hazards.

(H) Interaction with other highway users such as motorcyclists, bicyclists, and pedestrians.

(I) Limits and benefits of the various automobile insurance coverages.

(f) Additional rating factors that the commissioner shall approve if the commissioner finds, on the basis of appropriate investigation and any public hearings the commissioner considers necessary, that the factors are consistent with the purposes of this chapter and that they would encourage innovation or encourage insureds to minimize the risks of loss from hazards insured against.

(3) Each insurer shall establish and maintain premium discount plans pursuant to the following:

(a) An automobile theft prevention and automobile recovery premium discount plan. A premium discount plan required under this subdivision shall provide for a premium discount for automobile comprehensive coverage based upon the installation of an approved automobile theft prevention or automobile recovery device. As used in this subdivision, "approved automobile theft prevention or automobile recovery device" means a device that is designed to prevent the theft of an insured's automobile or aid the police in the recovery of an insured's automobile and that is approved by the board of directors of the automobile theft prevention authority.

(b) An automobile safety belt premium discount plan. A premium discount plan required under this subdivision shall provide for a premium discount for automobile personal protection insurance in an amount that is actuarially sound. A premium discount plan established under this subdivision may require the insured individual to certify in writing that he or she will wear a safety belt while operating the insured motor vehicle in compliance with section 710e of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.710e of the Michigan Compiled Laws, as a condition to receiving the premium discount. If an insured receives a premium discount after providing this certification and is injured while operating a motor vehicle without wearing a safety belt at the time of the injury, an insurer may impose a $500.00 deductible with respect to that loss in addition to any deductible provided in the policy and may subsequently deny to the insured the right to participate in any premium discount plan established by the insurer pursuant to this subdivision for a period of 12 months.

(4) Each insurer shall establish a secondary or merit rating plan for automobile insurance, other than comprehensive coverage. A secondary or merit rating plan required under this subsection shall provide for premium surcharges for any or all coverages for automobile insurance, other than comprehensive coverage, based upon any or all of the following when that information becomes available to the insurer:

(a) Substantially at-fault accidents.

(b) The suspension of the insured's license by the secretary of state under section 319(1)(c) to (f) of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws, or a suspension under a substantially similar law of another state.

(c) Convictions for, determinations of responsibility for civil infractions for, or findings of responsibility in probate court for civil infractions for any of the following:

(*i*) Violations under chapter VI of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being sections 257.601 to 257.750 of the Michigan Compiled Laws.

(*ii*) Operating a motor vehicle while license is suspended or revoked.

(*iii*) Operating a motor vehicle in violation of a license restriction under section 312 of Act No. 300 of the Public Acts of 1949, being section 257.312 of the Michigan Compiled Laws.

(*iv*) A violation substantially similar to any of the violations listed in subparagraphs (*i*) to (*iii*) under the laws of another state or local unit of government in this state or another state.

(5) Beginning 300 days after the effective date of the amendatory act that added this subsection and if uniformly offered and applied to all of the insurer's insureds, an insurer may elect not to surcharge an insured under subsection (4). A secondary or merit rating plan under subsection (4) shall provide for a flat dollar surcharge.

(6) An insurer shall not establish or maintain rates or rating classifications for automobile insurance based upon sex or marital status.

(7) Notwithstanding other provisions of this chapter, automobile insurance risks shall be grouped by territory, and territorial base rates for coverages shall be established as follows:

(a) Except as provided in subdivision (b), an insurer shall not be limited as to the number of territories employed in its rating plan and a territorial base rate may be made applicable in 1 or more territories contained in the rating plan of the insurer.

(b) Beginning 120 days after the effective date of the amendatory act that added this subdivision, each territory shall include at least 60,000 registered automobiles and shall consist of a single contiguous area. A territory that includes any portion of a city shall include the entire city except that any portion of a city that has 60,000 registered automobiles may be a separate territory if the remaining portion or portions of the city also have at least 60,000 registered automobiles. If a portion of a city that has 60,000 registered automobiles is made a separate territory, the dividing lines of that territory shall be comprised only of roadways that are state trunklines, county primary, or municipal major streets.

(8) This section shall not be construed as limiting insurers or rating organizations from establishing and maintaining statistical reporting territories. This section shall not be construed to prohibit an insurer from establishing or maintaining, for automobile insurance, a premium discount plan for senior citizens in this state who are 65 years of age or older, if the plan is uniformly applied by the insurer throughout this state. If an insurer has not established and maintained such a premium discount plan for senior citizens, the insurer shall offer reduced premium rates to senior citizens in this state who are 65 years of age or older and who drive less than 3,000 miles per year, regardless of statistical data.

(9) Classifications established pursuant to this section for home insurance other than inland marine insurance provided by policy floaters or endorsements shall be based only upon 1 or more of the following factors:

(a) Amount and types of coverage.

(b) Security and safety devices, including locks, smoke detectors, and similar, related devices.

(c) Repairable structural defects reasonably related to risk.

(d) Fire protection class.

(e) Construction of structure, based on structure size, building material components, and number of units.

(f) Loss experience of the insured, based upon prior claims attributable to factors under the control of the insured that have been paid by an insurer.

(g) Use of smoking materials within the structure.

(h) Distance of the structure from a fire hydrant.

(i) Availability of law enforcement or crime prevention services.

(10) Notwithstanding other provisions of this chapter, home insurance risks shall be grouped by territory, and territorial base rates for coverages shall be established as follows:

(a) An insurer shall not be limited as to the number of territories employed in its rating plan. However, an insurer shall not employ more than 3 different territorial base rates for a home insurance coverage. A territorial base rate may be made applicable in 1 or more territories contained in the rating plan of the insurer.

(b) An insurer shall not employ a territorial base rate for home insurance for owner-occupied dwelling policies that is less than 70% of the highest territorial base rate for the same policy, all other rating classifications being the same.

(c) An insurer shall not employ a territorial base rate for home insurance for renter or tenant policies that is less than 65% of the highest territorial base rate for the same policy, all other rating classifications being the same.

(11) An insurer may utilize factors in addition to those specified in this section for home insurance, if the commissioner finds, after a hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, that the factors would encourage innovation, would encourage insureds to minimize the risks of loss from hazards insured against, and would be consistent with the purposes of this chapter.

(12) If uniformly offered and applied to all the insurer's insureds, an automobile insurer may offer premium discounts based upon the length of time the insured has been free of substantially at-fault accidents with the insurer.

(13) If uniformly offered and applied to all the insurer's insureds, an automobile insurer may offer premium discounts based upon the length of time the insured has been insured with the insurer.

Sec. 2111b. A rate filing for automobile insurance package policies shall not be modified, changed, or altered for a period of 6 months after the effective date of the filing unless the modification, change, or alteration for the rating cells affected by the filing results in an overall premium reduction for the affected cells. Changes in risk symbols and changes in risk symbol applications and values shall only be made in conjunction with a rate filing. This section does not prohibit an insurer from making a rate filing at any time that only provides changes to rates based upon assessments levied against insurers pursuant to section 3104 or 3330. These rate filings shall not be considered a rate filing for purposes of this section.

Sec. 2111f. (1) By not later than 120 days after the effective date of the amendatory act that added this section, each insurer shall file base rates for automobile insurance that reflect the anticipated average premium savings resulting from the changes made in the amendatory act that added this section for personal protection insurance, residual liability insurance, uninsured motorist coverage, and collision and comprehensive coverages. In this filing, an automobile insurer's overall average rate for all coverages for insureds selecting the personal protection insurance coverage specified in section 3107(1)(a)(*i*) shall not be more than the overall average rate charged for all coverages by the automobile insurer on November 1, 1992 reduced by at least 16%. However, the personal protection insurance premium for an insured who selects the $5,000,000.00 personal protection insurance coverage specified in section 3107(1)(a)(*ii*) shall not be increased to an amount that is greater than what the insurer charged for personal protection insurance coverage on November 1, 1992. The rate reduction or premium for a specified insured may vary due to discounts, surcharges, application of chapter 21 rating factors, and coverage selection.

(2) By not sooner than 150 days after the effective date of the amendatory act that added this section and not later than 210 days after the effective date of the amendatory act that added this section, an insurer may petition the commissioner for relief from all or part of the percentage set in subsection (1). In its petition an insurer shall do both of the following:

(a) Demonstrate that based on its book of business the savings resulting from the changes made in the amendatory act that added this section do not justify all or part of the percentage set in subsection (1) and that the effect of the full rate reduction would produce a combined ratio for automobile insurance for the insurer in excess of the statewide average combined ratio for all automobile insurers for calendar years 1989 through 1992.

(b) Specify the percentage of rate reduction that is justified, based on its book of business, by the savings resulting from the changes made in the amendatory act that added this section and that is necessary to produce a combined ratio for the insurer equal to the statewide average combined ratio for all automobile insurers for calendar years 1989 through 1992.

(3) By not later than 60 days after receipt of a petition under subsection (2), the commissioner by order shall deny the insurer's request for regulatory relief or shall grant the insurer's request for regulatory relief in either the percentage specified in the insurer's petition or in such percentage that the commissioner determines appropriate.

(4) An insurer aggrieved by the commissioner's order under subsection (3) may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The costs associated with a hearing shall be paid for by the insurer.

(5) Nothing in this section prohibits an insurer from reducing rates by more than the percentage set in subsection (1).

Sec. 2111g. An insurer shall not charge an insured a premium for any assessment levied against the insurer pursuant to section 3330 or chapter 79 if the insurer uses the assessment as a credit under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws.

Sec. 2111h. (1) The commissioner shall conduct a statewide loss ratio study for each automobile insurer and shall report to the senate and house of representatives standing committees on insurance issues on the results of the study 300 days after the effective date of the amendatory act that added this section and biennially thereafter.

(2) The commissioner shall examine and report to the senate and house of representatives standing committees on insurance issues 390 days after the effective date of the amendatory act that added this section on increases or decreases in automobile insurance rates by automobile insurers. After this initial report the commissioner shall examine and report to the senate and house of representatives standing committees on insurance issues 570 days after the effective date of the amendatory act that added this section and annually thereafter on increases or decreases in automobile insurance rates by automobile insurers.

(3) There is appropriated to the insurance bureau for the 1993-94 state fiscal year $50,000.00 for the purpose of preparing the reports required by this section.

Sec. 2112a. (1) An automobile insurer shall not increase the premium for an automobile insurance policy that is being renewed if the increase is due to an increase in rates unless the insurer sends the renewal notice showing the higher premium to the insured at least 30 days before the insurance policy renewal date. If an insurer does not send the renewal notice showing the higher premium to the insured at least 30 days before the insurance policy renewal date, the insured is not liable for the prorated portion of the increase in premium.

(2) As used in this section, "prorated portion of the increase in premium" means the amount of increase in premium divided by the number of days in the billing period multiplied by the number of days by which the insurer failed to send the 30-day notice required by this section.

Sec. 2115a. By not later than 120 days after the effective date of the amendatory act that added this section, automobile insurers shall establish and implement a market assistance plan that shall be subject to the commissioner's approval. The market assistance plan shall assist consumers in obtaining automobile insurance by establishing, maintaining, and advertising a statewide toll-free telephone number with sufficient capacity to provide adequate service through which consumers are able to obtain comparative automobile insurance rate information, the telephone numbers of automobile insurers, copies of the buyer's guide prepared pursuant to section 2115c, and information on consumers' rights to automobile insurance.

Sec. 2115b. (1) By October 1 of each year, each automobile insurer that has any agents located within Michigan and with a volume of business that places it in the top 85% of the private passenger nonfleet automobile insurance market in Michigan shall maintain at least 1 agent who is physically located and actively writing business in each rating territory in its rating plan.

(2) For purposes of this section:

(a) "Actively writing business" means having an office and regularly advertising for automobile insurance business.

(b) Volume of business shall be determined by net direct premium written in the previous calendar year.

Sec. 2115c. The commissioner shall prepare semiannually a buyer's guide to automobile insurance in Michigan in at least 8-point type. The buyer's guide shall compare rates among a reasonable representation of at least 50 automobile insurers in Michigan in each territory used by the principal advisory organization for statistical reporting purposes. Beginning April 1, 1996 the buyer's guide shall contain comparative complaint information. The commissioner shall have copies of the buyer's guide available to the general public and shall provide copies of the buyer's guide to the governor, to each member of the legislature, and to secretary of state branch offices for distribution to the public. The secretary of state shall mail with each notice of license plate renewal a notice that a buyer's guide to automobile insurance is available at each local secretary of state office and from the insurance bureau by writing or telephoning the insurance bureau.

Sec. 2115d. The commissioner shall prepare a report by October 1, 1993 and annually thereafter that provides damageability and repairability ratings for the most recent available model year of vehicles. These ratings shall be based on credible information provided by recognized automobile damage and repair experts from government and other institutions. The report shall include a description of the accuracy and usability of the developed ratings and a commentary on the best way to provide consumers with reliable information on the impact that vehicle resistance to damage and cost of repair, by various car makes and models, have on insurance rates. The report shall be made available to the public upon request, shall be given to the governor and members of the senate and house of representatives standing committees on insurance issues, and summations of the report shall be distributed to the media.

Sec. 2115e. An automobile insurer shall give to each insured who calls the insurer concerning a collision claim the telephone numbers for the following:

(a) The better business bureau.

(b) The bureau of automotive regulation.

(c) If applicable, the consumer affairs division of the nearest local unit of government.

Sec. 2118. (1) As a condition of maintaining its certificate of authority, an insurer shall not refuse to insure, refuse to continue to insure, or limit coverage available to an eligible person for automobile insurance, except in accordance with underwriting rules established pursuant to this section and sections 2119 and 2120.

(2) The underwriting rules that an insurer may establish for automobile insurance shall be based only on the following:

(a) Criteria identical to the standards set forth in section 2103(1).

(b) The insurance eligibility point accumulation in excess of the amounts established by section 2103(1) of a member of the household of the eligible person insured or to be insured, if the member of the household usually accounts for 10% or more of the use of a vehicle insured or to be insured. For purposes of this subdivision, a person who is the principal driver for 1 automobile insurance policy shall be rebuttably presumed not to usually account for more than 10% of the use of other vehicles of the household not insured under the policy of that person.

(c) With respect to a vehicle insured or to be insured, substantial modifications from the vehicle's original manufactured state for purposes of increasing the speed or acceleration capabilities of the vehicle.

(d) Type of vehicle insured or to be insured, based on 1 of the following, without regard to the age of the vehicle:

(*i*) The vehicle is of limited production or of custom manufacture.

(*ii*) The insurer does not have a rate lawfully in effect for the type of vehicle.

(*iii*) The vehicle represents exposure to extraordinary expense for repair or replacement under comprehensive or collision coverage.

(e) Use of a vehicle insured or to be insured for transportation of passengers for hire, for rental purposes, or for commercial purposes. Rules under this subdivision shall not be based on the use of a vehicle for volunteer or charitable purposes or for which reimbursement for normal operating expenses is received.

(f) Payment of a minimum deposit at the time of application or renewal, not to exceed the smallest deposit required under an extended payment or premium finance plan customarily used by the insurer.

(g) For purposes of requiring comprehensive deductibles of not more than $150.00, or of refusing to insure if the person refuses to accept a required deductible, the claim experience of the person with respect to comprehensive coverage.

(h) Total abstinence from the consumption of alcoholic beverages except if such beverages are consumed as part of a religious ceremony. However, an insurer shall not utilize an underwriting rule based on this subdivision unless the insurer has been authorized to transact automobile insurance in this state prior to January 1, 1981, and has consistently utilized such an underwriting rule as part of the insurer's automobile insurance underwriting since being authorized to transact automobile insurance in this state.

Sec. 2120. (1) Affiliated insurers may establish underwriting rules so that each affiliate will provide automobile insurance only to certain eligible persons. This subsection shall apply only if an eligible person can obtain automobile insurance from 1 of the affiliates. The underwriting rules shall be in compliance with this section and sections 2118 and 2119.

(2) An insurer may establish separate rating plans so that certain eligible persons are provided automobile insurance under 1 rating plan and other eligible persons are provided automobile insurance under another rating plan. This subsection shall apply only if all eligible persons can obtain automobile insurance under a rating plan of the insurer. Underwriting rules consistent with this section and sections 2118 and 2119 shall be established to define the rating plan applicable to each eligible person.

(3) Underwriting rules under this section shall be based only on the following:

(a) For a vehicle insured or to be insured, substantial modifications from the vehicle's original manufactured state for purposes of increasing the speed or acceleration capabilities of the vehicle.

(b) For purposes of insuring persons who have refused a deductible lawfully required under section 2118(2)(g), the claim experience of the person with respect to comprehensive coverage.

(c) Refusal of the person to pay a minimum deposit required under section 2118(2)(f).

(d) A person's insurance eligibility point accumulation under section 2103(1)(h), or the total insurance eligibility point accumulation of all persons who account for 10% or more of the use of 1 or more vehicles insured or to be insured under the policy.

(e) The type of vehicle insured or to be insured as provided in section 2118(2)(d).

Sec. 2134. Each insurer transacting automobile insurance in this state shall do both of the following:

(a) Be a paying member of the national insurance crime bureau.

(b) Secure from each insured the vehicle identification number for each vehicle insured by the insurer.

Sec. 2136. Each insurer, when writing automobile comprehensive insurance coverage for a person who was not previously a policyholder with the insurer or when insuring an automobile that was not previously insured by the insurer for a person who was previously a policyholder with the insurer but who has filed a claim with the insurer within the preceding 3 years to recover for the theft of an automobile, shall verify the existence of the automobile being insured. To comply with this section, an insurer shall either make a personal inspection of the automobile or obtain not less than 2 photographs of the automobile that depict the automobile diagonally from the front and rear. This section shall not apply when an agent subject to section 1209(2) transfers a person's automobile comprehensive insurance coverage from an insurer that has authorized the agent to another insurer that has authorized the agent.

Sec. 2138. An insurer shall not make a claim payment on an automobile insurance policy for a loss arising from the theft of an automobile covered under the policy unless the insured has filed a report of the theft to the state police or the law enforcement agency within whose jurisdiction the theft occurred.

Sec. 2140. (1) Subject to subsection (3), if the commissioner finds that a person or organization has violated a provision of this chapter or the rules promulgated pursuant to this chapter, the commissioner may order any or all of the following:

(a) Payment of a civil fine of not more than $5,000.00 for each violation, and if the violation is willful, a civil fine of not more than $25,000.00 for each violation. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A cease and desist order.

(c) An order to comply.

(d) A refund of any overcharges with interest and penalties.

(2) The commissioner may suspend the authority of a rating organization or insurer to do business in this state who fails to comply with an order of the commissioner under this section within the time specified by the order, or any extension of the order that the commissioner may grant, but the suspension shall not affect the validity or continued effectiveness of rates previously filed and effective. The commissioner shall not suspend the authority of a rating organization or insurer to do business in this state for failure to comply with an order until the time prescribed for an appeal from the order has expired, or, if an appeal has been taken, until the order for the suspension has been affirmed. The commissioner may determine when a suspension of authority shall become effective, and the suspension shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

(3) A civil fine shall not be imposed and the authority to do business in this state shall not be suspended or revoked except upon a written order of the commissioner, specifying the alleged violation and stating his or her findings, made after a hearing held upon not less than 10 days' written notice to the person or organization. An order issued by the commissioner pursuant to this section shall not require the payment of civil fines exceeding $50,000.00.

(4) The commissioner shall report annually to the senate and house of representatives standing committees on insurance issues on the amount of fines collected pursuant to this section.

Sec. 3015. (1) Each automobile insurance policy delivered or issued for delivery in this state that provides coverage for the theft of an automobile may include either or both of the following provisions:

(a) A provision that imposes a $500.00 deductible to the theft loss of the automobile if the automobile was unattended when stolen and was stolen while the keys to the automobile were located in the passenger compartment of the automobile. The deductible shall not apply if the automobile is the subject of a bailment contract.

(b) A provision that reduces the recovery under the policy by 10% for the theft loss of the automobile if the automobile was unattended when stolen and was stolen while the keys to the automobile were located in the passenger compartment of the automobile. The reduction under this subdivision shall not apply if the automobile is the subject of a bailment contract.

(2) If an insurer includes either or both of the provisions provided in subsection (1) in an automobile insurance policy that provides coverage for the theft of an automobile, the insurer shall include the provision or provisions in each

automobile insurance policy providing coverage for the theft of an automobile that is thereafter delivered or issued for delivery by the insurer.

Sec. 3037. (1) At the time a new applicant for the insurance required by section 3101 for a private passenger nonfleet automobile makes an initial written application to the insurer, an insurer shall offer both of the following collision coverages to the applicant:

(a) Limited collision coverage that pays for collision damage to the insured vehicle without a deductible amount if the operator of the vehicle is not substantially at fault in the accident from which the damage arose.

(b) Broad form collision coverage that pays for collision damage to the insured vehicle regardless of fault, with deductibles in such amounts as may be approved by the commissioner, which deductibles shall be waived if the operator of the vehicle is not substantially at fault in the accident from which the damage arose.

(2) Any payment of a claim under subsection (2) by an insurer shall be payable jointly to the policyholder and repair facility.

(3) In addition to the coverages offered pursuant to subsection (1), standard and limited collision coverage may be offered with deductibles as approved by the commissioner.

(4) If the applicant is required by the insurer to sign the written application form described in subsection (1), if the applicant chooses to reject both of the collision coverages, or limited collision without a deductible, offered under subsection (1), the rejection shall be made in writing either on a separate form or as part of the application, or some combination thereof, as approved by the commissioner. The rejection statement shall inform the applicant of his or her rights if damage occurs to the insured vehicle under the alternative coverage option selected.

(5) If a written application is made by mail and the applicant fails to sign or return a written rejection statement as required by subsection (4), the requirements of subsection (4) shall be considered to have been satisfied with respect to the insurer if all of the following occur:

(a) The application provides the applicant with an opportunity to select the coverages required to be offered under subsection (1).

(b) The applicant is requested to sign the rejection statement, either as part of the application or as a separate form issued with the application, if the applicant fails to select any of the coverages specified in subsection (1).

(c) The applicant signed the application as otherwise required by the insurer.

(6) At the time of the initial written application specified in subsection (1), an agent or insurer shall provide the applicant with a written explanation of collision coverage options in easily understandable language, if that information is not contained in the application form.

(7) At least annually in conjunction with the renewal of a private passenger nonfleet automobile insurance policy, or at the time of an addition, deletion, or substitution of a vehicle under an existing policy, other than a group policy, an insurer shall inform the policyholder, on a form approved by the commissioner, of all of the following:

(a) The current status of collision coverage, if any, for the vehicle or vehicles affected by the renewal or change and the rights of the insured if damage occurs to the insured vehicle under the current coverage.

(b) The collision coverages available under the policy and the rights of the insured if damage occurs to the insured vehicle under each collision option.

(c) Procedures for the policyholder to follow if he or she wishes to change the current collision coverage.

(8) As used in this section:

(a) "Collision damage" does not include losses customarily insured under comprehensive coverages.

(b) "Repair facility" means a motor vehicle repair facility as defined in section 1302 of the motor vehicle service and repair act, Act No. 300 of the Public Acts of 1974, being section 257.1302 of the Michigan Compiled Laws.

(c) "Substantially at fault" means a person's action or inaction was more than 50% of the cause of the accident.

(9) If damage occurs to an insured vehicle, an insured may use any repair facility for an estimate or the providing of repair services covered by the automobile insurance policy.

(10) An insurer may establish a direct repair program. If an insurer establishes a direct repair program, the insurer shall make available to all repair facilities the criteria necessary to participate in the direct repair program. Any repair facility that meets the established criteria is eligible to participate in the direct repair program. An insurer shall not prohibit an eligible repair facility from participating in the direct repair program, and an insurer shall not limit the number of repair facilities participating in a direct repair program.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance in an amount not less than that required in section 3107(1)(a)(*i*), property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway. Notwithstanding any other provision in

this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved upon a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(a) "Automobile insurance" means that term as defined in section 2102.

(b) "Highway" means that term as defined in section 20 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.20 of the Michigan Compiled Laws.

(c) "Motorcycle" means a vehicle that is required to be registered for use on a public highway in this state having a saddle or seat for the use of the rider, designed for operation upon a public highway and to travel on not more than 3 wheels in contact with the ground, and that is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground. Motorcycle does not include a moped, as defined in section 32b of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws, or an ORV as defined in section 1 of Act No. 319 of the Public Acts of 1975, being section 257.1601 of the Michigan Compiled Laws.

(d) "Motorcycle accident" means a loss involving the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but not involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

(e) "Motor vehicle" means a vehicle that is required to be registered for use on a public highway in this state, including a trailer, and that is operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws, or an ORV as defined in section 1 of Act No. 319 of the Public Acts of 1975, being section 257.1601 of the Michigan Compiled Laws. Motor vehicle does not include a farm tractor or other implement of husbandry that is not subject to the registration requirements of the Michigan vehicle code pursuant to section 216 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.216 of the Michigan Compiled Laws.

(f) "Motor vehicle accident" means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

(g) "Owner" means any of the following:

(*i*) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.

(*ii*) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

(*iii*) A person who has the immediate right of possession of a motor vehicle under an installment sale contract.

(h) "Ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle" means that the involvement of the motor vehicle in the injury was directly related to the transportation function of the motor vehicle.

(i) "Registrant" does not include a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

(3) Security may be provided under a policy issued by an insurer duly authorized to transact business in this state that affords insurance for the payment of benefits described in subsection (1). A policy of insurance represented or sold as providing security shall be deemed to provide insurance for the payment of the benefits.

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved upon a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes any person filing the security as provided in this section.

Sec. 3101a. (1) An insurer in conjunction with the issuance of an automobile insurance policy as defined in section 3303 shall provide 2 certificates of insurance to each policyholder. Each certificate of insurance shall list the market assistance plan's toll-free telephone number established pursuant to section 2115a. The insurer shall mark 1 of the certificates as the secretary of state's copy, and that copy or an electronically or electromagnetically transmitted facsimile of that copy shall be filed with the secretary of state by the policyholder upon application for a vehicle registration. The secretary of state shall not maintain the certificate of insurance received under this subsection on file.

(2) A person who supplies false information to the secretary of state under this section or who issues or uses an invalid certificate of insurance is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both.

Sec. 3103a. A person who is successful in a court action against an insurer for wrongfully denying benefits due under this chapter shall recover reasonable attorney fees from the insurer. This section applies to claims filed on and after 120 days after the effective date of the amendatory act that added this section.

Sec. 3104. (1) An unincorporated, nonprofit association to be known as the excess PIP association, hereinafter referred to as the association, is created. Each insurer engaged in writing insurance coverages that provide the security required by section 3101(1) within this state, as a condition of its authority to transact insurance in this state, shall be a member of the association and shall be bound by the plan of operation of the association. Each insurer engaged in writing insurance coverages that provide the security required by section 3103(1) within this state, as a condition of its authority to transact insurance in this state, shall be considered a member of the association, but only for purposes of assessments under subsection (7)(d). Except as expressly provided in this section, the association shall not be subject to any laws of this state with respect to insurers, but in all other respects the association shall be subject to the laws of this state to the extent that the association would be were it an insurer organized and subsisting under chapter 50.

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

(a) For an automobile policy issued or renewed before 300 days after the effective date of the amendatory act that added this subdivision, $250,000.00.

(b) For an automobile policy issued or renewed 300 days to and including 665 days after the effective date of the amendatory act that added this subdivision, $300,000.00.

(c) For an automobile policy issued or renewed 666 days to and including 1031 days after the effective date of the amendatory act that added this subdivision, $400,000.00.

(d) For an automobile policy issued or renewed on and after 1032 days after the effective date of the amendatory act that added this subdivision, $500,000.00, adjusted annually every October 1 by the lesser of 5% or the consumer price index, and rounded up to the nearest $25,000.00.

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

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

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

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

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

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

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

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

(d) Subject to subsection (25), in a manner provided for in the plan of operation, calculate and charge to members of the association a total premium sufficient to cover the expected losses and expenses of the association that the association will likely incur during the period for which the premium is applicable. The premium shall include an amount to cover incurred but not reported losses for the period and may be adjusted for any excess or deficient premiums from previous periods. Excesses or deficiencies from previous periods may be fully adjusted in a single period or may be adjusted over several periods in a manner provided for in the plan of operation. Each member shall be charged an amount equal to that member's total earned car years of insurance providing the security required by section 3101(1) or 3103(1), or both, written in this state during the period to which the premium applies, multiplied by the average premium per car and adjusted to reflect the amount of coverage selected by each member's insureds under section 3107. The average premium per car shall be the total premium calculated divided by the total earned car years of insurance

providing the security required by section 3101(1) or 3103(1) written in this state of all members during the period to which the premium applies. As used in this subdivision, "car" includes a motorcycle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The establishment of necessary facilities.

(b) The management and operation of the association.

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

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

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

(f) The investment policy of the association.

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

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

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

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

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

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

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

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

(18) The plan of operation, unless approved sooner in writing, shall be considered to meet the requirements of this section if it is not disapproved by written order of the commissioner within 30 days after the date of its submission. Before disapproval of all or any part of the proposed plan of operation, the commissioner shall notify the board in what respect the plan of operation fails to meet the requirements and objectives of this section. If the board fails to submit a revised plan of operation that meets the requirements and objectives of this section within the 30-day period, the commissioner shall enter an order accordingly and shall immediately formulate and place into effect a plan consistent with the requirements and objectives of this section.

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

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

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

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

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

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

(25) Notwithstanding any other provisions of this section, the association is authorized to assess members to recoup a deficiency that exists in the MCCA account established under subsection (27) only as provided in this subsection. The association shall evaluate annually the assets and liabilities of the association and determine if a deficiency exists. If a deficiency does exist, the association, in accordance with the plan of operation, shall assess members annually as follows:

(a) If the deficiency is less than $100,000,000.00, the full amount of the deficiency.

(b) If the deficiency is greater than or equal to $100,000,000.00, the greater of $100,000,000.00 or 12% of the deficiency.

(c) If an assessment under subdivision (a) or (b) is insufficient to permit the association to meet its payments, then the assessment shall be increased to an amount sufficient to meet those payments.

(26) Any change in the amounts listed in subsection (2) applies only to policies issued or renewed on and after the date of the change in the amount.

(27) The association shall maintain 2 separate accounts out of which members shall be indemnified for ultimate loss. An MCCA account shall indemnify for losses arising under policies issued or renewed effective before 120 days after the effective date of the amendatory act that added this subsection. An excess PIP account shall indemnify for losses arising out of policies issued or renewed on and after 120 days after the effective date of the amendatory act that added this subsection. Each account shall be self-supporting and there shall be no transfer of assets or liabilities between accounts.

(28) Beginning 120 days after the effective date of the amendatory act that added this subsection, an insurer shall be prohibited from separating the premium paid to either association from the personal protection premium stated on an automobile insurance declaration page.

(29) As used in this section:

(a) "Consumer price index" means the annual average percentage increase in the Detroit consumer price index for all items for the prior 12-month period as reported by the United States department of labor and as certified by the commissioner.

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

Sec. 3104a. (1) There is created a personal injury protection task force. The personal injury protection task force shall consist of members appointed by the commissioner.

(2) The personal injury protection task force shall prepare a plan to reduce the costs associated with automobile related injuries including catastrophic claims. The plan shall include but is not limited to the following:

(a) The study of the issue of structured settlements.

(b) The examination of the use of managed care, preferred provider arrangements, case management, treatment protocols, utilization review, rehabilitation, and other contractual arrangements. The examination of case management shall include the methods currently used by insurers and providers and may be extended to include an experimental case management process using criteria developed by the personal injury protection task force that would then be implemented by insurers, providers, and injured persons who volunteer to participate in the experimental case management process.

(c) The proposal of standards for assessing injuries and prognosis, making treatment goals, and implementing treatment.

(d) The investigation of cost shifting and other suspected abuses within the system including recommendations on limiting costs associated with rehabilitation and home and vehicle modification abuses.

(e) The examination of the mix of potential structures and options for delivery of products, services, and accommodations.

(f) The study of the use of qualified review and the use of independent medical examination.

(3) The personal injury protection task force shall report the plan to the governor and the senate and house of representatives standing committees on insurance issues by not later than 18 months after the effective date of this section.

Sec. 3104b. (1) An automobile insurer may use clinical care management for each insured whose personal protection insurance benefits are not expected to exceed the current indemnification amount listed in section 3104(2). An automobile insurer shall use clinical care management for each insured whose personal protection insurance benefits are expected to exceed the current indemnification amount listed in section 3104(2).

(2) An automobile insurer shall do the following:

(a) Develop clinical care management enrollment forms and procedures.

(b) Develop procedures for an injured person to select a clinical care manager and for the insurer to appoint a clinical care manager for those injured persons who do not select a clinical care manager.

(c) Neither appoint nor contract for clinical care management services with itself, an entity in which it has a financial interest, or another automobile insurer.

(d) Require an injured person to designate a clinical care manager prior to authorizing payment for services.

(e) Reimburse each clinical care manager reasonable fees for the development, management, and update of a clinical care management plan.

(3) A clinical care manager shall do the following:

(a) Submit an initial clinical care management plan with an insurer within 60 days of the insurer's request for a clinical care management plan.

(b) Develop a new clinical care management plan for an injured person expected to incur allowable expenses for a period which will exceed the duration of an initial or succeeding clinical care management plan.

(c) Maintain patient-physician confidentiality.

(4) As used in this section:

(a) "Clinical care management plan" means a written plan of a duration not greater than 6 months developed and documented by or under the direction of a clinical care manager setting forth the care and other products, services, and accommodations for an injured person's care, treatment, recovery, and rehabilitation. A clinical care management plan shall list and explain all services that are to be provided and a schedule for review at appropriate, periodic intervals determined by the clinical care manager. A revised clinical care management plan may be developed before 6 months have expired if an injured person's condition or needs change. An injured person, somebody authorized to speak and act on the injured person's behalf, or a health care provider may initiate a written request for a revised clinical care management plan. A request shall include the rationale for the revision.

(b) "Clinical care manager" means a licensed medical or osteopathic doctor, physiatrist, psychologist, nurse, social worker, or physical or occupational therapist who provides the type of care necessary for the injured person's care, treatment, recovery, or rehabilitation.

Sec. 3107. (1) Except as provided in subsection (3), personal protection insurance benefits are payable for the following:

(a) Allowable expenses that, for policies issued or renewed on or after 120 days after the effective date of the amendatory act that added subsection (7), are as provided in subparagraphs (*i*) and (*ii*), incurred for medically appropriate products, services, and accommodations for an injured person's care, recovery, or rehabilitation. For policies issued or renewed on or after 120 days after the effective date of the amendatory act that added subsection (7) and on forms approved by the commissioner, an insurer shall offer the following coverages and an insured shall select in writing 1 of the following coverages:

(*i*) Coverage for allowable expenses consisting of all reasonable charges incurred up to a maximum of $1,000,000.00 for medically appropriate products, services, and accommodations for an injured person's care, recovery, or rehabilitation. This limit shall be adjusted up annually by the commissioner beginning October 1, 1993 so that 99% of personal protection insurance benefit claims are fully covered by the limit provided for in this subparagraph. Any change in the limit applies only to benefits arising out of accidents occurring after the date of the change in the limit.

(*ii*) Coverage for allowable expenses consisting of all reasonable charges incurred up to $2,000,000.00, $3,000,000.00, $4,000,000.00, or $5,000,000.00 maximums as selected by the insured, and the insurer may offer additional coverage limits, for medically appropriate products, services, and accommodations for an injured person's care, recovery, or rehabilitation. Any change in the limits applies only to benefits arising out of accidents occurring after the date of the change in the limit.

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured. Work loss does not include any loss after the date on which the injured person dies. Because the benefits received from personal protection insurance for loss of income are not taxable income, the benefits payable for such loss of income shall be reduced 15% unless the claimant presents to the insurer in support of his or her claim reasonable proof of a lower value of the income tax advantage in his or her case, in which case the lower value shall apply. Beginning March 30, 1973, the benefits payable for work loss sustained in a single 30-day period and income earned by an injured person for work during the same period in an amount that together shall not exceed $1,000.00, which maximum applies pro rata to any lesser period of work loss. Beginning October 1, 1974, the maximum shall be adjusted annually every October 1 to reflect changes in the cost of living under rules prescribed by the commissioner but any change in the maximum applies only to benefits arising out of accidents occurring after the date of change in the maximum.

(c) Expenses not exceeding $20.00 per day reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent.

(2) The following apply to subsection (1):

(a) If an insured fails to select in writing on a form approved by the commissioner 1 of the coverages in subsection (1)(a), an insurer shall provide coverage in the amount set forth in subsection (1)(a)(*i*).

(b) Coverage limits under subsection (1)(a) are provided on a per individual per loss occurrence basis. Coverage under subsection (1)(a) applies only to benefits payable to the insured named in the policy, the insured's spouse, and any relative of either domiciled in the same household.

(c) A person who is not an insured named in a policy, the insured's spouse, or a relative of either domiciled in the same household is entitled only to coverage in the limit set forth in subsection (1)(a)(*i*).

(d) Personal protection insurance benefits are limited to the limit set forth in subsection (1)(a)(*i*) per individual per loss occurrence for accidents occurring in the state of Michigan if the injured person is a nonresident of Michigan and the injured person's benefits are payable under a policy delivered outside of Michigan only if eligible under section 3163.

(e) Personal protection insurance benefits are not payable to a nonresident injured in an accident occurring outside of Michigan to the extent the nonresident recovers medical or disability benefits under any other policy. If personal protection insurance benefits are payable to a nonresident under this subdivision, the benefits are limited to the limit set forth in subsection (1)(a)(*i*) per individual per loss occurrence.

(3) Each insurer transacting automobile insurance in this state shall offer a waiver to each person who is 60 years of age or older and in the event of an accidental bodily injury would not be eligible to receive work loss benefits under subsection (1)(b). An insurer shall offer a reduced premium rate to a person who waives coverage under this subsection for work loss benefits. Waiver of coverage for work loss benefits applies only to work loss benefits payable to the person or persons who have signed the waiver form.

(4) As used in this section:

(a) Medically appropriate products, services, and accommodations rendered or prescribed by a health care facility or health care provider are those that are medically necessary and do not include products, services, and accommodations that would have been needed or used by the injured person or a member of the injured person's household without regard to the loss occurrence. Under no circumstances shall an insurer be required to provide coverage for any product, service, or accommodation that is not medically appropriate and medically necessary for an injured person's care, recovery, or rehabilitation and reasonably likely to provide continued effectiveness with respect to the injured person's care, recovery, or rehabilitation. If an insured wants durable medical equipment that is more expensive than what the insurer has determined is actually medically appropriate and medically necessary, the cost of the equipment that the insurer has determined is medically appropriate and medically necessary shall be paid as partial payment for the durable medical equipment that the insured desires. If reimbursement for a product, service, or accommodation rendered or prescribed is initially rejected in whole or in part by an insurer as not being medically appropriate and medically necessary, the insurer, at the provider's request, shall have the decision reexamined by a provider who has the same license, certification, or registration as the provider who provided the product, service, or accommodation being reexamined or who has a license, registration, or certification with a scope of practice that includes the scope of practice of the license, registration, or certification of the provider who provided the product, service, or accommodation being reexamined. Each insurer shall designate a person with whom providers can discuss insurer determinations of what is medically appropriate and medically necessary. Disputes over reasonable charges and medically appropriate and medically necessary products, services, and accommodations shall be a question of law to be decided by the court.

(b) Expenses within personal protection insurance coverage shall not include charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except if the injured person requires special or intensive care, including but not limited to care provided by a psychiatric unit, or for funeral and burial expenses in excess of the amount set forth in the policy which shall not be less than $1,750.00 or more than $5,000.00.

(c) Expenses within personal protection insurance coverage shall not include experimental treatment or participation in research projects.

(d) Expenses for attendant care services provided by a home health agency are limited to the reasonable and customary charge of the agency for the appropriate skill level and time intensity of service. Expenses for attendant care services for home health care provided by licensed or unlicensed persons, including a member of the same household whether or not he or she is employed by a home health agency, are limited to the customary wage the individual would have received if in the employ of a home health agency commensurate with the person's qualifications. Expenses for attendant care services for supervision by members of the same household will not be covered in excess of 16 hours per day. Attendant care provided continuously for more than 6 months may be limited to quadriplegic spinal cord, brain injured, or similarly injured persons as diagnosed by the injured person's physician. As used in this subdivision, "attendant" means an individual who provides assistance to the injured person with activities of daily living including but not limited to ambulating, feeding, grooming, dressing, toileting, transfers, and supervision that may be required for safety of the injured person. An attendant may be a trained nurse or nursing assistant but an attendant providing attendant care shall not be reimbursed for practicing the profession of nursing.

(e) Expenses for skilled home care provided by a home health agency are limited to the reasonable and customary charge of the agency for the appropriate skill level and time intensity of service. Expenses for skilled home care provided by licensed or unlicensed persons, including a member of the same household whether or not he or she is employed by a home health agency, are limited to the customary wage the individual would have received if in the employ of a home health agency commensurate with the person's qualifications. Expenses for skilled home care by members of the same household will not be covered in excess of 16 hours per day.

(f) Expenses for medically appropriate psychological services that are reasonably likely to produce significant measurable improvement in the injured person's psychological status and that are prescribed by a physician or licensed psychologist shall be limited to a fixed-duration time period not to exceed 26 weeks and shall apply only if the need for the services arose out of the injured person's loss occurrence. The services may be extended for 1 additional time period not to exceed 26 weeks if the services are reasonably likely to produce significant measurable improvement in the injured person's psychological status. The 26 and 52 week period may be extended if it is reasonably likely that treatment of a longer duration, which may be intermittent over the years the case is managed, may produce significant measurable improvement in the injured person's psychological or neuropsychological status. Psychological services shall be provided by a person licensed under part 182 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.18201 to 333.18237 of the Michigan Compiled Laws, or by a social worker registered under article 16 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.1601 to 339.1610 of the Michigan Compiled Laws.

(g) Expenses for medically appropriate vocational rehabilitation services that are reasonably likely to produce significant rehabilitation shall be reimbursed for a fixed-duration time period not to exceed 52 weeks. The services may be extended for 1 additional time period not to exceed 52 weeks if the services are reasonably likely to produce significant rehabilitation and shall cease once the injured person has acquired employment skills.

(h) Expenses for home modification accommodations that are functionally necessary to meet the injured person's treatment, rehabilitation, maintenance, and daily living needs that are a result of his or her injuries shall not exceed $50,000.00 adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner but any change in the maximum applies only to benefits arising out of loss occurrences after the date of change in the maximum.

(i) Expenses for a special motor vehicle or motor vehicle modification accommodations that are functionally necessary for the vehicular mobility of the injured person are limited to necessary modifications to an existing motor vehicle, or if a special motor vehicle is required, the cost of the special vehicle and the functionally necessary modifications to it that are directly necessitated by and related to the injured person's injuries. Costs for replacement special motor vehicles or motor vehicle modifications shall not be incurred more frequently than once every 7 years and are limited to a maximum of $50,000.00 every 7 years adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner.

(5) An insurer shall directly reimburse a provider of services received pursuant to this chapter unless the insured has already directly reimbursed the provider of services.

(6) Regardless of the number of motor vehicles insured or insurers providing security in accordance with this chapter, or the provisions of any other law providing for direct benefits without regard to fault for motor or any other vehicle accidents, a person shall not recover duplicate benefits for the same expenses or losses incurred under this section.

(7) A health care facility or health care provider shall not bill an insured or report to a credit reporting agency an insured's failure to pay for products, services, and accommodations rendered when an amount is disputed by the insurer or when that amount exceeds the payment made by the insurer. If an insured receives medical care from a health care facility or health care provider for an automobile accident injury, an assignment of the insured's rights to enforce coverage and collect medical care payments for services rendered and products provided by that health care facility or health care provider automatically passes to the health care facility or health care provider that rendered the services or provided the products.

(8) This section shall not be interpreted to exclude any health care provider providing services within the scope of their licensure, certification, or registration. As used in this subsection, "health care provider" means a person licensed, certified, or registered under parts 61 to 65 or 161 to 182 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.6101 to 333.6523 and 333.16101 to 333.18237 of the Michigan Compiled Laws.

Sec. 3109a. (1) An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. The deductibles and exclusions required to be offered by this section are subject to prior approval by the commissioner and apply only to benefits payable to the person named in the policy, the spouse of the insured, and any relative of either domiciled in the same household.

(2) Health and accident coverage that does not become effective until after the date of the injury is secondary to personal protection insurance benefits for all services related to the injury.

(3) Coverage under title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395c to 1395i, 1395i-2 to 1395i-4, 1395j to 1395t, 1395u to 1395w-2, 1395w-4 to 1395ccc, or title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f and 1396i to 1396u, or coverage pursuant to a medicare supplemental policy or certificate or a contract issued by a health maintenance organization to an individual eligible for medicare is not considered other health and accident coverage for purposes of this section.

Sec. 3115. (1) Except as provided in section 3114(1), a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) Insurers of owners or registrants of motor vehicles involved in the accident.

(b) Insurers of operators of motor vehicles involved in the accident.

(2) When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.

(3) A limit upon the amount of personal protection insurance benefits available because of accidental bodily injury to 1 person arising from 1 motor vehicle accident shall be determined without regard to the number of policies applicable to the accident.

(4) Regardless of the number of vehicles insured under the policy, in no event shall the limit of liability for 2 or more motor vehicles or 2 or more policies be added together, combined, or stacked to determine the limit of insurance coverage available for each injured person covered under the policy.

Sec. 3116. (1) A subtraction from personal protection insurance benefits shall not be made because of the value of a claim in tort based on the same accidental bodily injury.

(2) A subtraction from or reimbursement for personal protection insurance benefits paid or payable under this chapter shall be made only if recovery is realized upon a tort claim arising from an accident occurring outside this state, a tort claim brought within this state against the owner or operator of a motor vehicle with respect to which the security required by section 3101 (3) and (4) was not in effect, or a tort claim brought within this state based on intentionally caused harm to persons or property, and shall be made only to the extent that the recovery realized by the claimant is for damages for which the claimant has received or would otherwise be entitled to receive personal protection insurance benefits. A subtraction shall be made only to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery. If personal protection insurance benefits have already been received, the claimant shall repay to the insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery. The insurer shall have a lien on the recovery to this extent. A recovery by an injured person or his or her estate for loss suffered by the person shall not be subtracted in calculating benefits due a dependent after the death and a recovery by a dependent for loss suffered by the dependent after the death shall not be subtracted in calculating benefits due the injured person.

(3) A personal protection insurer with a right of reimbursement under subsection (1), if suffering loss from inability to collect reimbursement out of a payment received by a claimant upon a tort claim, is entitled to indemnity from a person who, with notice of the insurer's interest, made the payment to the claimant without making the claimant and the insurer joint payees as their interests may appear or without obtaining the insurer's consent to a different method of payment.

(4) A subtraction or reimbursement shall not be due the claimant's insurer from that portion of any recovery to the extent that recovery is realized for noneconomic loss as provided in section 3135(1) and (3)(b) or for allowable expenses, work loss, and survivor's loss as prescribed in sections 3107 to 3110 in excess of the amount recovered by the claimant from his or her insurer.

Sec. 3118. (1) A person who has reason to believe that an automobile insurer has improperly denied his or her claim for benefits shall appeal the denial pursuant to this section before filing an action for recovery of insurance benefits with the court.

(2) As a condition of its authority to transact automobile insurance in this state, an insurer shall establish reasonable internal procedures to provide claimants with a private informal managerial-level conference regarding a dispute over a claim for benefits. These procedures shall include all of the following:

(a) A notice to the claimant at the time of the denial of all or a part of the claim advising him or her of the right to appeal the denial within 90 days of the denial and the procedure to follow in requesting and obtaining a private informal managerial-level conference with the insurer.

(b) A method of providing the claimant, upon request and payment of a reasonable copying charge, with information pertinent to the denial.

(c) A designation of 1 or more managerial-level persons who have the authority to resolve claim denials on behalf of the insurer, who shall represent the insurer at the conference.

(d) A method for resolving the dispute promptly and informally, while protecting the interests of both the claimant and the insurer.

(3) The insurer shall file with the commissioner a list of the person or persons that it has designated to conduct the informal managerial-level conferences required by this section.

(4) The insurer shall provide a conference within 30 days after a request by a claimant, shall inform the claimant in writing of the insurer's decision within 30 days after the conference, and shall advise the claimant in writing that if the claimant is not satisfied with the insurer's decision, the claimant must request a conciliation conference with the commissioner within 30 days after notice of the insurer's decision and must proceed with a conciliation conference with the commissioner before the claimant may file an action for recovery of insurance benefits with the court.

(5) The commissioner shall provide a conciliation conference within 30 days after a request by a claimant and shall inform the claimant in writing of the commissioner's decision within 30 days after the conciliation conference. The commissioner's recommendation following a conciliation conference is admissible in any subsequent court action.

(6) The commissioner shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to establish a procedure for providing a conciliation conference under this section that shall be reasonably designed to resolve matters informally and as rapidly as possible, while protecting the interests of both the claimant and the insurer. The commissioner shall submit these rules to a public hearing pursuant to Act No. 306 of the Public Acts of 1969 by not later than 180 days after the effective date of the amendatory act that added this section.

(7) There shall be no requirement for a claimant to have an attorney present at any conference under this section.

(8) This section shall take effect 120 days after the effective date of the amendatory act that added this section.

Sec. 3135. (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after 120 days after the effective date of the amendatory act that added this subsection, all of the following apply:

(a) The injured person shall not have suffered serious impairment of body function unless the person has suffered an objectively manifested impairment of an important body function that affects his or her general ability to lead his or her normal life. The issue of whether an injured person has suffered serious impairment of body function shall be a question of law for the court.

(b) Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

(c) Damages shall not be assessed in favor of a party who was operating his or her own vehicle at the time the damage occurred and did not have in effect for the same motor vehicle involved in the accident the security required by section 3101 at the time the damage occurred.

(3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

(a) Intentionally caused harm to persons or property. Even though a person knows that harm to persons or property is substantially certain to be caused by his or her act or omission, the person does not cause or suffer such harm intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property.

(b) Damages for noneconomic loss as provided and limited in subsections (1) and (2).

(c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the daily, monthly, and 3-year limitations contained in those sections. The party liable for damages is entitled to an exemption reducing his or her liability by the amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.

(d) Damages up to $500.00 to motor vehicles, to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (4).

(4) In an action for damages pursuant to subsection (3)(d):

(a) Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

(b) Liability shall not be a component of residual liability, as prescribed in section 3131, for which maintenance of security is required by this act.

(5) Actions under subsection (3)(d) shall be commenced, whenever legally possible, in the small claims division of the district court or the municipal court. If the defendant or plaintiff removes the action to a higher court and does not prevail, the judge may assess costs.

(6) A decision of a court made pursuant to subsection (3)(d) shall not be res judicata in any proceeding to determine any other liability arising from the same circumstances as gave rise to the action brought pursuant to subsection (3)(d).

(7) In an action for damages pursuant to subsection (1) or (3)(a) filed on or after 120 days after the effective date of the amendatory act that added this subsection:

(a) The court presiding over the action shall, after a jury verdict, do 1 of the following within 21 days after entry of the judgment:

(*i*) Concur in the award.

(*ii*) On its own motion or on the motion of any party, review the excessiveness or inadequacy of the amount awarded and determine the appropriate amount.

(b) In determining the excessiveness or inadequacy of the amount awarded under subdivision (a)(*ii*), the court shall consider all of the following factors:

(*i*) The evidence presented at trial.

(*ii*) Whether the amount awarded was within the limits of what reasonable minds would consider just compensation for the injury and damages sustained.

(*iii*) Whether the amount awarded is comparable to awards in similar cases within the state and in other jurisdictions.

(*iv*) Whether the amount awarded was the result of improper methods, prejudice, passion, partiality, sympathy, corruption, or mistake of law or fact.

(c) If the court finds that the only error in the trial is the inadequacy or excessiveness of the amount awarded, the court may grant a new trial on the issue of the amount of damages only unless, within 14 days, the parties consent in writing to the entry of a judgment in an amount determined by the court.

Sec. 3142. (1) Personal protection insurance benefits are payable as loss accrues.

(2) Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any part of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. For the purpose of calculating the extent to which benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery.

(3) An overdue payment bears interest at the rate set by section 6013(6) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.6013 of the Michigan Compiled Laws. Interest paid under this subsection shall be offset by interest payable under section 6013(6) of Act No. 236 of the Public Acts of 1961.

Sec. 3145. (1) Beginning 120 days after the effective date of the amendatory act that added this subsection, an action for recovery of insurance benefits payable under this chapter shall not be commenced unless the claimant has appealed the denial of benefits through the informal dispute resolution process described in section 3118. Any statute of limitations period applicable to the recovery of insurance benefits payable under this chapter excluding the period listed in subsection (2) is tolled until the claimant has appealed the denial of benefits through the informal dispute resolution process described in section 3118.

(2) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury shall not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident causing the injury or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.

(3) If the notice has been given or a payment has been made under subsection (2), the action may be commenced at any time within 1 year after the most recent allowable expense, work loss, or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

(4) The notice of injury required by subsection (2) may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his or her behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place, and nature of his or her injury.

(5) An action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident.

Sec. 3157. (1) Subject to subsections (2) and (3), a physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services, and accommodations rendered. The charge to an injured person or his or her personal protection insurer shall not exceed the amount the person or institution customarily charges and accepts as payment in full for like products, services, and accommodations in cases not involving personal protection insurance.

(2) By not later than 90 days after the effective date of the amendatory act that added this subsection and continuing until a schedule of fees is implemented pursuant to subsection (3), a physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury are limited to, and shall be paid by the automobile insurer at, either of the following as selected by the provider:

(a) The amount paid for treatment, service, accommodation, and medicine pursuant to payment under, or schedules of maximum fees for worker's compensation contained in, R 418.101 to R 418.2324 of the Michigan administrative code.

(b) For a health care facility, 113% of the ratio of a participating health care facility's costs to its charges for the prior calendar year as used in the development of reimbursement to that provider by a payer authorized under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws, multiplied by the prior calendar year's charges for specific automobile accident injury treatments, services, accommodations, and medicines. For a health care provider, 110% of the amount paid for treatment, service, accommodation, and medicine pursuant to schedules of maximum fees issued by a payer authorized

under Act No. 350 of the Public Acts of 1980. For facilities in a provider class plan where controiled charges are paid by a nonprofit health care corporation, controlled charges shall also be paid by automobile insurers. This subdivision shall not be interpreted as requiring a nonprofit health care corporation to reveal any participating provider plans. Any information needed for reimbursement under this subdivision shall come from health care facilities and health care providers who elect to be paid pursuant to this subdivision.

(3) The commissioner shall establish schedules of fees pursuant to rules promulgated by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, that a physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance and a person or institution providing rehabilitative occupational training following the injury shall be limited to for reimbursement. The rules shall be submitted for a public hearing by 21 months after the effective date of the amendatory act that added this subsection. The commissioner shall provide for an advisory committee to aid and assist the commissioner in establishing the schedules of maximum fees under this subsection for any charges or fees that are payable under this subsection. The advisory committee shall be appointed by and serve at the pleasure of the commissioner.

(4) Unless an automobile insurer can demonstrate to the commissioner's satisfaction that a utilization review system will not be cost effective, each insurer shall implement a utilization review system. A utilization review system shall be automated and include all of the following:

(a) A provider enrollment file.

(b) Uniform claims forms.

(c) Uniform diagnosis and procedure code systems.

(d) Uniform place of service codes that indicate the setting where the service was rendered.

(e) Uniform codes to identify other liable third party payers.

(f) Type of service codes.

(g) Quantification of the dollar amounts of all claims rejected to and paid by other liable parties.

(h) A mechanism for identifying and rejecting claims that fail to meet the requirements of the statute of limitations.

(i) A mechanism for identifying and rejecting nonaccident related claims for review.

(5) Each automobile insurer shall report annually to the commissioner in a form designated by the commissioner the results of its utilization review system established under subsection (4). The report shall include at a minimum the following information:

(a) The savings derived through coordination of benefits with health care coverage carriers.

(b) The savings derived from identification of duplicate claims.

(c) The savings derived from identification of rejection of nonaccident related claims.

(d) All procedures identified as having been performed at facilities not licensed for those procedures including the names of the facilities involved.

(e) Number of claims and amounts expended, by type of medical and rehabilitative and therapeutic services, for claims processed and paid for the year.

(6) Automobile insurers shall not use a utilization review system in bad faith or to do either of the following:

(a) Unduly delay payment of legitimate claims.

(b) Harass or discriminate against medical providers or injured automobile accident victims.

(7) A health care facility and health care provider shall accept the amount reimbursed under subsections (2) and (3) as payment in full.

(8) Nothing in this section requires a health care facility or health care provider to accept a payment at a rate less than what is provided for in subsections (2) and (3) and an insurer is not required to pay more than the health care facility's or health care provider's usual and customary charge.

(9) This act does not preclude health care facilities or health care providers from contracting with insurers for reimbursement levels that vary from those in this section.

Sec. 3172. (1) A person entitled to a claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan in any of the following situations:

(a) If no personal protection insurance is applicable to the injury.

(b) If no personal protection insurance applicable to the injury can be identified.

(c) If the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss.

(d) If the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed.

(2) In any of the situations under subsection (1), unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and the insurer to which the claim is assigned, or the assigned claims facility if the claim is assigned to it, is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

(3) Except as otherwise provided in this subsection, personal protection insurance benefits, including benefits arising from accidents occurring before the effective date of this subsection, payable through an assigned claims plan shall be reduced to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits, to a person claiming personal protection insurance benefits through the assigned claims plan. This subsection only applies when the personal protection insurance benefits are payable through the assigned claims plan because no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. As used in this subsection "sources" and "benefit sources" do not include the program for medical assistance for the medically indigent under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.119b of the Michigan Compiled Laws, or insurance under the health insurance for the aged act, title XVIII of the social security amendments of 1965.

(4) If the obligation to provide personal protection insurance benefits cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, and if a method of voluntary payment of benefits cannot be agreed upon among or between the disputing insurers, all of the following shall apply:

(a) The insurers who are parties to the dispute shall, or the claimant may, immediately notify the assigned claims facility of their inability to determine their statutory obligations.

(b) The claim shall be assigned by the assigned claims facility to an insurer which shall immediately provide personal protection insurance benefits to the claimant or claimants entitled to benefits in the highest amount applicable among the policies in dispute.

(c) An action shall be immediately commenced on behalf of the assigned claims facility by the insurer to whom the claim is assigned in circuit court for the purpose of declaring the rights and duties of any interested party.

(d) The insurer to whom the claim is assigned shall join as parties defendant each insurer disputing either the obligation to provide personal protection insurance benefits or the equitable distribution of the loss among the insurers.

(e) The circuit court shall declare the rights and duties of any interested party whether or not other relief is sought or could be granted.

(f) After hearing the action, the circuit court shall determine the insurer or insurers, if any, obligated to provide the applicable personal protection insurance benefits and the equitable distribution, if any, among the insurers obligated therefor, and shall order reimbursement to the assigned claims facility from the insurer or insurers to the extent of the responsibility as determined by the court. The reimbursement ordered under this subdivision shall include all benefits and costs paid or incurred by the assigned claims facility and all benefits and costs paid or incurred by insurers determined not to be obligated to provide applicable personal protection insurance benefits, including reasonable attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court.

(5) If no personal protection insurance is applicable to the injury or no personal protection insurance applicable to the injury can be identified, personal protection insurance benefits shall be paid only to the limit provided for in section 3107(1)(a)(*i*). If the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed, personal protection insurance benefits shall be paid to the limit selected by the insured under section 3107(1)(a).

(6) This section does not apply and section 3172a does apply if applicable personal protection insurance benefits are unavailable because an insurer otherwise obliged to provide that coverage under this chapter became, after October 1, 1993, an insolvent insurer as defined in chapter 79.

Sec. 3172a. (1) A person entitled to a claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain the full personal protection insurance benefits entitled through the Michigan property and casualty guaranty association established under chapter 79 if all of the following are satisfied:

(a) Personal protection insurance applicable to the injury is unavailable because an insurer otherwise obliged to provide that coverage under this chapter became, after October 1, 1993, an insolvent insurer as defined in chapter 79.

(b) Except as provided in subsection (2), the claim satisfies the requirements of a covered claim under chapter 79.

(2) Notwithstanding section 7931(3), the obligation of the Michigan property and casualty guaranty association under this section shall be in the same priority as that of the insolvent insurer, but for its insolvency, under sections 3114 and 3115.

## CHAPTER 32A

## AUTOMOBILE INSURANCE ANTIFRAUD PLANS AND PROVISIONS

Sec. 3275. As used in this chapter:

(a) "Antifraud plan" means an automobile antifraud plan established under section 3277.

(b) "Office" means the automobile insurance fraud office established under section 3285.

Sec. 3277. (1) Each insurer authorized to transact automobile insurance in this state shall establish and maintain an automobile insurance antifraud plan and may establish and maintain an automobile insurance antifraud plan in conjunction with other automobile insurers. By not later than 300 days after the effective date of the amendatory act that added this chapter, the antifraud plan of insurers authorized to transact automobile insurance in this state on the effective date of the amendatory act that added this chapter shall be filed with the commissioner. An admitted automobile insurer that begins writing automobile insurance after the effective date of the amendatory act that added this chapter shall file an antifraud plan with the commissioner before initiating the writing of automobile insurance. An automobile insurer authorized to transact automobile insurance in this state after the effective date of this section shall file an antifraud plan within 6 months after authorization. A modification to the antifraud plan shall be filed with the commissioner within 30 days after the plan has been modified.

(2) Each antifraud plan established under subsection (1) shall contain all of the following:

(a) Specific procedures to prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud.

(b) Specific procedures to review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected.

(c) A requirement to report suspected fraud to the appropriate law enforcement agencies, and to cooperate with those agencies in their investigation and prosecution of fraud cases.

(d) A requirement to undertake civil actions, if appropriate, against persons who have been convicted of fraudulent activities.

(e) A requirement to report annually to the office the number of cases of suspected fraud reported or filed under subdivisions (c) and (d).

(3) Each antifraud plan shall be filed with the commissioner. If, after review, the commissioner finds that the antifraud plan does not comply with subsection (2), the antifraud plan shall be disapproved. Notice of disapproval shall include a statement of the specific reasons for the disapproval. An antifraud plan disapproved by the commissioner shall be amended and refiled within 60 days after the date of the disapproval notice.

(4) The commissioner may audit an insurer to ensure compliance with the insurer's antifraud plan as a part of an examination performed under this act.

Sec. 3279. (1) Each insurer authorized to transact automobile insurance in this state shall provide annually to the commissioner a summary report on actions taken under the insurer's antifraud plan to prevent and combat insurance fraud, including, but not limited to, measures taken to protect and ensure the integrity of electronic data processing - generated data and manually compiled data, statistical data on the amount of resources committed to combating fraud, and the amount of fraud identified and recovered during the reporting period.

(2) An antifraud plan or summary report filed with the commissioner under this section and section 3277 and any reports or materials related to such a plan or report are not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 3281. (1) Each insurer authorized to transact automobile insurance in this state and its employees, agents, and independent adjusters is required to report the incidence of suspected insurance fraud to the appropriate federal, state, or local criminal law enforcement authority. Licensed insurance agents and independent adjusters may elect to report suspected fraud through the affected insurer with which they have a contractual relationship. All reports of insurance fraud to law enforcement authorities shall be made in writing, and copies of the report shall be sent within 7 days to the office. If suspected insurance fraud involves agents or independent adjusters, a copy of the report shall also be sent to the commissioner.

(2) A person required to report suspected fraud under this chapter is not subject to any liability arising out of the filing of any reports or the furnishing of any information required by this chapter.

Sec. 3283. An insurer that fails to file in a timely manner an antifraud plan as required by section 3277 or an insurer that does not make a good faith attempt to file an antifraud plan that complies with section 3277 is subject to a civil penalty for each violation not to exceed $5,000.00 at the commissioner's discretion after consideration of all relevant factors, including the willfulness of the violation. An insurer that fails to follow its approved antifraud plan is subject to a civil penalty for each violation, not to exceed $10,000.00, at the commissioner's discretion after consideration of all relevant factors, including the willfulness of the violation.

Sec. 3285. The commissioner after consultation with insurers authorized to transact automobile insurance in this state shall establish, within the insurance bureau, a motor vehicle insurance fraud office. Within 180 days of its establishment, the commissioner shall establish a plan of operation for the office that is consistent with the provisions of this chapter. The plan of operation shall include, but not be limited to, all of the following:

(a) Detailed procedures for all insurers to regularly report fraud-related data to the office.

(b) Policies and procedures governing insurer and law enforcement agency access to office data, information, and reports.

(c) A detailed accounting of how information on insurance fraud filed by insurers will be organized and maintained.

(d) Any other information, data, procedure, or program relating to insurance fraud as may be required by the commissioner or determined necessary to facilitate the reporting and use of information and data.

Sec. 3287. (1) Except as provided in subsections (3) and (4), each insurer authorized to transact automobile insurance in this state, as a condition of its authority to transact the business of insurance in this state, shall report information on suspected fraudulent claims and applications for benefits arising out of the maintenance and use of a motor vehicle in this state with the office within 45 days of receipt of the application or claim.

(2) The information filed by an insurer under subsection (1) shall include, but is not limited to, all of the following:

(a) Identification of claimants.

(b) Identification of medical providers.

(c) Identification of repair shops.

(d) Identification of insurance adjusters.

(e) Identification of attorneys representing claimants.

(f) Description of claims.

(g) Other information considered relevant by the submitting insurer or the office.

(h) Other information required by the commissioner.

(3) The commissioner shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, permitting a person to contest the accuracy of any reported information.

Sec. 3289. Each insurer authorized to transact automobile insurance in this state shall report to the office all relevant information on suspected fraudulent applications or claims as provided for in section 3287.

Sec. 3291. The commissioner shall issue an annual report listing all insurance companies that are complying with this chapter. Information about suspected fraud that is reported to the office shall be made available, as appropriate, to law enforcement officials and any insurer authorized to transact automobile insurance in this state.

Sec. 3295. On or before October 1 of each year the office, on behalf of the commissioner, shall file an annual report on the nature and effect of automobile insurance fraud in this state. The report shall present statistical data on fraud in this state. The commissioner may prescribe by regulation the content of the report.

Sec. 3297. All applications for insurance, renewals, and claim forms shall contain a statement that clearly states in substance the following:

> Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete, or misleading information shall, upon conviction, be subject to imprisonment for up to 1 year for a misdemeanor conviction or up to 10 years for a felony conviction and payment of a fine of up to $5,000.00.

Sec. 3320. (1) Effective 300 days after the effective date of the amendatory act that added this subsection, the facility shall establish rates that are designed to be self-supporting for eligible private passenger nonfleet automobile insureds, ineligible private passenger nonfleet automobile insureds, and all other automobile insurance.

(2) The facility, with respect to private passenger nonfleet automobiles, shall provide for all of the following:

(a) The equitable distribution of applicants to designated participating members in accordance with the plan of operation.

(b) Issuance of policies of automobile insurance to qualified applicants as provided in the plan of operation.

(c) The appointment of a number of participating members appointed by the facility to act on behalf of the facility for the distribution of risks or for the servicing of insureds, as provided in the plan of operation and consistent with this section. The facility shall do all of the following:

(*i*) Appoint those members having the 5 highest participation ratios, as defined in section 3303(e)(*i*) to act on behalf of the facility.

(*ii*) Appoint other members to act on behalf of the facility who volunteer to so act and who meet reasonable servicing standards established in the plan of operation, up to a maximum of 5 in addition to those appointed pursuant to subparagraph (*i*).

(*iii*) Appoint additional members to act on behalf of the facility as necessary to do all of the following:

(A) Assure convenient access to the facility for all citizens of this state.

(B) Assure a reasonable quality of service for persons insured through the facility.

(C) Assure a reasonable representation of the various insurance marketing systems.

(D) Assure reasonable claims handling.

(E) Assure a reasonable range of choice of insurers for persons insured through the facility.

(d) Standards and monitoring procedures to assure that participating members acting on behalf of the facility do all of the following:

(*i*) Provide service to persons insured through the facility equivalent to the service provided to persons insured by the insurer voluntarily.

(*ii*) Handle claims in an efficient and reasonable manner.

(*iii*) Provide internal review procedures for persons insured through the facility identical to those established pursuant to chapter 21 for persons insured voluntarily.

(e) Establish procedures and guidelines for the issuance of binders by agents upon receipt of the application for coverage.

(f) Provide for the issuance of policies of automobile insurance to qualified applicants whose licenses to operate a vehicle have been suspended pursuant to section 310, 310b, 310d, 315, 321a, 324, 328, 512, 515, 625, 625f, 748, 801c, or 907 of Act No. 300 of the Public Acts of 1949, as amended, being sections 257.310, 257.310b, 257.310d, 257.315, 257.321a, 257.324, 257.328, 257.512, 257.515, 257.625, 257.625f, 257.748, 257.801c, and 257.907 of the Michigan Compiled Laws, as provided in the plan of operation. These policies may be canceled after a period of not less than 30 days if the insured fails to produce proof that the suspended license has been reinstated.

(3) Automobile insurance made available under this section shall be equivalent to the automobile insurance normally available in the voluntary competitive market in forms as approved by the commissioner with such changes, additions, and amendments as are adopted by the board of governors and approved by the commissioner.

Sec. 3330. (1) The board of governors shall have all power to direct the operation of the facility, including, at a minimum, all of the following:

(a) To sue and be sued in the name of the facility. A judgment against the facility shall not create any liabilities in the individual participating members of the facility.

(b) To delegate ministerial duties, to hire a manager, to hire legal counsel, and to contract for goods and services from others.

(c) To assess participating members on the basis of participation ratios pursuant to section 3303 to cover anticipated costs of operation and administration of the facility, to provide for equitable servicing fees, and to share losses, profits, and expenses pursuant to the plan of operation.

(d) To impose limitations on cancellation or nonrenewal by participating members of facility-placed business, in addition to the limitations imposed by chapters 21 and 32.

(e) To provide for a limited number of participating members to receive equitable distribution of applicants; or to provide for a limited number of participating members to service applicants in a plan of sharing of losses in accordance with section 3320(2)(c) and the plan of operation.

(f) To provide for standards of performance of service for the participating members designated pursuant to subdivision (e).

(g) To adopt a plan of operation and any amendments to the plan, not inconsistent with this chapter, necessary to assure the fair, reasonable, equitable, and nondiscriminatory manner of administering the facility, including compliance with chapter 21, and to provide for such other matters as are necessary or advisable to implement this chapter, including matters necessary to comply with the requirements of chapter 21.

(h) To provide for servicing fees.

(2) The board of governors shall institute or cause to be instituted by the facility or on its behalf an automatic data processing system for recording and compiling data relative to individuals insured through the facility. An automatic data processing system established under this subsection shall, to the greatest extent possible, be made compatible with the automatic data processing system maintained by the secretary of state, to provide for the identification and review of individuals insured through the facility.

Sec. 3340. (1) As agent for participating members, the facility shall file with the commissioner every manual of classification, every manual of rules and rates, every rating plan and every modification of a manual of classification, manual of rules and rates, or rating plan proposed for use for private passenger nonfleet automobile insurance placed through the facility. The facility may incorporate by reference in its filings other material on file with the commissioner. The classifications, rules and rates, and any amendments thereof shall be subject to prior written approval by the commissioner. Except as provided in this chapter, rates filed by the facility for private passenger nonfleet automobile insurance shall be in accordance with chapter 21 and rates by the facility for all other automobile insurance shall be filed in accordance with chapter 24.

(2) Every participating member designated to act on behalf of the facility shall be authorized to use the rates and rules approved by the commissioner for use by the facility on business placed through the facility and shall not use other rates for automobile insurance placed through the facility.

(3) Laws relating to rating organizations or advisory organizations shall not apply to functions provided for under this section.

(4) Private passenger nonfleet automobile rates for the facility shall comply with the following requirements:

(a) The territories for the facility shall be defined as those of the principal rating organization or principal advisory organization for the voluntary market.

(b) The rates for the facility shall conform with the requirements of chapter 21 governing voluntary market rates.

(5) If it appears that the income to be derived by the facility from premiums paid by policyholders and from investment income is not adequate to cover the anticipated losses and expenses for the facility's fiscal year, the facility shall immediately increase premiums, reduce administrative expenses and servicing carrier fees, or both, as approved by the commissioner in order to assure that the facility continues to be self-supporting.

Sec. 3355. Every agent who is authorized to solicit, negotiate or effect automobile insurance on behalf of any participating member shall:

(a) Offer to place automobile insurance through the facility for any qualified applicant requesting the agent to do so.

(b) If the qualified applicant accepts the offer in subdivision (a), forward the application and any deposit premium required in accordance with the plan of operation, rules, and procedures of the facility.

(c) Be entitled to receive, and any participating member be entitled to pay, a commission for placing insurance through the facility at the uniform rates of commission as provided in the plan of operation which, effective 300 days after the effective date of the amendatory act that added section 3340(5), shall not be greater than 5% for insurance for eligible drivers placed through the facility.

Sec. 7911. (1) To implement this chapter, there shall be maintained within this state, by all insurers authorized to transact in this state insurance other than life or disability insurance, except the Michigan basic property insurance association created pursuant to section 2920 and on and after June 29, 1990, the accident fund created in the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws, an association of those insurers to be known as the property and casualty guaranty association, hereafter referred to as the "association". Each insurer shall be a member of the association as a condition of its authority to continue to transact insurance in this state.

(2) An insurer from which insurance has been or may be procured in this state solely by virtue of sections 1901 to 1955 shall not be considered to be an insurer authorized to transact insurance in this state for the purposes of this chapter.

(3) The association shall be subject to the requirements of this chapter, chapter 78, and section 3172a, but shall not be subject to the other chapters of this act. The association shall be subject to other laws of this state to the extent that it would be subject to those laws if it were an insurer organized and operating under chapter 50, to the extent that those other laws are consistent with this chapter.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved ----------

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Governor.