

HOUSE BILL No. 4994

June 26, 1997, Introduced by Reps. Bogardus, Gubow and Scott and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3104 (MCL 500.3104), as amended by 1980
PA 445.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3104. (1) An unincorporated, nonprofit association to
2 be known as the catastrophic claims association, hereinafter
3 referred to as the association, is created. Each insurer engaged
4 in writing insurance coverages ~~which~~ THAT provide the security
5 required by section 3101(1) within this state, as a condition of
6 its authority to transact insurance in this state, shall be a
7 member of the association and shall be bound by the plan of oper-
8 ation of the association. Each insurer engaged in writing
9 insurance coverages ~~which~~ THAT provide the security required by
10 section 3103(1) within this state, as a condition of its

1 authority to transact insurance in this state, shall be
2 considered a member of the association, but only for purposes of
3 ~~assessments~~ PREMIUMS under subsection (7)(d). Except as
4 expressly provided in this section, the association shall not be
5 subject to any laws of this state with respect to insurers, but
6 in all other respects the association shall be subject to the
7 laws of this state to the extent that the association would be
8 were it an insurer organized and subsisting under chapter 50.

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

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

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

26 (5) An unsatisfied net liability to the association of an
27 insolvent member shall be assumed by and apportioned among the

1 remaining members of the association as provided in the plan of
2 operation. The association shall have all rights allowed by law
3 on behalf of the remaining members against the estate or funds of
4 the insolvent member for sums due the association.

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

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

13 (a) Assume 100% of all liability as provided in subsection
14 (2).

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

25 (c) Maintain relevant loss and expense data relative to all
26 liabilities of the association and require each member to furnish
27 statistics, in connection with liabilities of the association, at

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

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

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

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

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

3 (f) Receive and distribute all sums required by the opera-
4 tion of the association.

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

14 (8) In addition to other powers granted to it by this sec-
15 tion, the association may do all of the following:

16 (a) Sue and be sued in the name of the association. A judg-
17 ment against the association shall not create any direct liabil-
18 ity against the individual members of the association. The asso-
19 ciation may provide for the indemnification of its members, mem-
20 bers of the board of directors of the association, and officers,
21 employees, and other persons lawfully acting on behalf of the
22 association.

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

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

4 (d) Pursuant to the plan of operation, adopt reasonable
5 rules for the administration of the association, enforce those
6 rules, and delegate authority, as the board considers necessary
7 to assure the proper administration and operation of the associa-
8 tion consistent with the plan of operation.

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

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

15 (g) Perform other acts not specifically enumerated in this
16 section ~~which~~ THAT are necessary or proper to accomplish the
17 purposes of the association and ~~which~~ THAT are not inconsistent
18 with this section or the plan of operation.

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

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

25 (a) The establishment of necessary facilities.

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

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

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

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

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

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

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

15 (11) ~~Not more than 30 days after the effective date of this~~
16 ~~section, the commissioner shall convene an organizational meeting~~
17 ~~of the board. The board shall be initially composed of 5 members~~
18 ~~of the association appointed by the commissioner to serve as~~
19 ~~directors, and the commissioner or a designated representative of~~
20 ~~the commissioner serving as an ex officio member of the board~~
21 ~~without vote. The initial board and each successor~~ EACH board
22 shall include 5 members ~~which~~ THAT would contribute a total of
23 not less than 40% of the total premium calculated pursuant to
24 subsection (7)(d). Each director shall be entitled to 1 vote.
25 The initial term of office of a director shall be 2 years.

26 (12) As part of the plan of operation, the board shall adopt
27 rules providing for the composition and term of successor boards

1 to the initial board, consistent with the membership composition
2 requirements in subsections (11) and (13). Terms of the direc-
3 tors shall be staggered so that the terms of all the directors do
4 not expire at the same time and so that a director does not serve
5 a term of more than 4 years.

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

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

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

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

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

1 then the commissioner, after consultation with the board, shall
2 formulate and place into effect a plan consistent with this
3 section.

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

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

23 (20) Upon approval by the commissioner and ratification by
24 the members of the plan submitted, or upon the promulgation of a
25 plan by the commissioner, each insurer authorized to write insur-
26 ance providing the security required by section 3101(1) in this
27 state, as ~~defined~~ PROVIDED in this section, shall be bound by

1 and shall formally subscribe to and participate in the plan
2 approved as a condition of maintaining its authority to transact
3 insurance in this state.

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

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

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

13 (24) THE AUDITOR GENERAL OR A CERTIFIED PUBLIC ACCOUNTANT
14 APPOINTED BY THE AUDITOR GENERAL ANNUALLY SHALL CONDUCT AND REMIT
15 TO THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON
16 INSURANCE ISSUES AN AUDIT OF THE ASSOCIATION. IN CONDUCTING THE
17 AUDIT, THE AUDITOR GENERAL OR APPOINTED CERTIFIED PUBLIC ACCOUN-
18 TANT SHALL HAVE ACCESS TO ALL RECORDS OF THE ASSOCIATION. EACH
19 AUDIT REQUIRED BY THIS SUBSECTION SHALL INCLUDE A DETERMINATION
20 OF WHETHER THE ASSOCIATION IS LIKELY TO BE ABLE TO CONTINUE TO
21 MEET ITS OBLIGATIONS.

22 (25) ~~(24) This section shall take effect on July 1, 1978.~~
23 The association shall not have liability for losses occurring
24 before ~~the effective date of this section~~ JULY 1, 1978.