

HOUSE BILL No. 4995

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 sections 134 and 3104 (MCL 500.134 and 500.3104),
section 134 as amended by 1990 PA 256 and section 3104 as amended
by 1980 PA 445.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 134. (1) Every certificate of authority or license in
2 force immediately prior to January 1, 1957 and existing under any
3 act repealed by this act is valid until its original expiration
4 date, unless earlier terminated in accordance with this act.

5 (2) Any plan of operation adopted by an association or
6 facility, and any premium or assessment levied against an insurer
7 member of that association or facility, is hereby validated
8 retroactively to the date of its original adoption or levy and
9 ~~shall continue~~ CONTINUES in force and effect according to the

1 terms of the plan of operation, premium, or assessment until
2 otherwise changed by the commissioner or the board of directors
3 of the association or facility pursuant to this act.

4 (3) An association or facility or the board of directors of
5 the association or facility is not a state agency and the money
6 of an association or facility is not state money.

7 (4) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 3104, A
8 record of an association or facility ~~shall be exempted~~ IS
9 EXEMPT from disclosure pursuant to section 13 of the freedom of
10 information act, ~~Act No. 442 of the Public Acts of 1976, being~~
11 ~~section 15.243 of the Michigan Compiled Laws~~ 1976 PA 442,
12 MCL 15.243.

13 (5) Any premium or assessment levied by an association or
14 facility, or any premium or assessment of a similar association
15 or facility formed under a law in force outside this state, is
16 not a burden or special burden for purposes of a calculation
17 under section 476a, and any premium or assessment paid to an
18 association or facility shall not be included in determining the
19 aggregate amount a foreign insurer pays to the commissioner under
20 section 476a.

21 (6) As used in this section, "association or facility" means
22 an association of insurers created under this act and any other
23 association or facility formed under this act as a nonprofit
24 organization of insurer members, including, but not limited to,
25 the following:

26 (a) The Michigan worker's compensation placement facility
27 created under chapter 23.

1 (b) The Michigan basic property insurance association
2 created under section 29.

3 (c) The catastrophic claims association created under
4 chapter 31.

5 (d) The Michigan automobile insurance placement facility
6 created under chapter 33.

7 (e) The Michigan life and health insurance guaranty associa-
8 tion created under chapter 77.

9 (f) The property and casualty guaranty association created
10 under chapter 79.

11 (g) The assigned claims facility created under section
12 3171.

13 Sec. 3104. (1) An unincorporated, nonprofit association to
14 be known as the catastrophic claims association, hereinafter
15 referred to as the association, is created. Each insurer engaged
16 in writing insurance coverages ~~which~~ THAT provide the security
17 required by section 3101(1) within this state, as a condition of
18 its authority to transact insurance in this state, shall be a
19 member of the association and shall be bound by the plan of oper-
20 ation of the association. Each insurer engaged in writing insur-
21 ance coverages ~~which~~ THAT provide the security required by sec-
22 tion 3103(1) within this state, as a condition of its authority
23 to transact insurance in this state, shall be considered a member
24 of the association, but only for purposes of ~~assessments~~
25 PREMIUMS under subsection (7)(d). Except as expressly provided
26 in this section, the association shall not be subject to any laws
27 of this state with respect to insurers, but in all other respects

1 the association shall be subject to the laws of this state to the
2 extent that the association would be were it an insurer organized
3 and subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (a) The establishment of necessary facilities.

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

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

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

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

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

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

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

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

23 (12) As part of the plan of operation, the board shall adopt
24 rules providing for the composition and term of successor boards
25 to the initial board, consistent with the membership composition
26 requirements in subsections (11) and (13). Terms of the
27 directors shall be staggered so that the terms of all the

1 directors do not expire at the same time and so that a director
2 does not serve a term of more than 4 years.

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

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

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

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

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

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

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

20 (20) Upon approval by the commissioner and ratification by
21 the members of the plan submitted, or upon the promulgation of a
22 plan by the commissioner, each insurer authorized to write insur-
23 ance providing the security required by section 3101(1) in this
24 state, as ~~defined~~ PROVIDED in this section, shall be bound by
25 and shall formally subscribe to and participate in the plan
26 approved as a condition of maintaining its authority to transact
27 insurance in this state.

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

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

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

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

13 (25) THE BUSINESS THAT THE BOARD MAY PERFORM SHALL BE CON-
14 DUCTED AT A PUBLIC MEETING OF THE BOARD HELD IN COMPLIANCE WITH
15 THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

16 (26) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
17 OR RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNC-
18 TION IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
19 MCL 15.231 TO 15.246.

20 Enacting section 1. This amendatory act does not take
21 effect unless Senate Bill No. _____ or House Bill No. _____
22 (request no. 01210'97 a) of the 89th Legislature is enacted into
23 law.