

HOUSE BILL No. 6204

September 24, 1998, Introduced by Rep. Llewellyn 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, and by adding section 3104a.

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 under subsection (7)(d). Except as expressly pro-
4 vided in this section, the association shall not be subject to
5 any laws of this state with respect to insurers, but in all other
6 respects the association shall be subject to the laws of this
7 state to the extent that the association would be were it an
8 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 COVERED BY A MOTOR VEHICLE
13 ACCIDENT POLICY ISSUED OR RENEWED EFFECTIVE BEFORE JULY 1, 1999,
14 BUT ONLY FOR AN INJURY THAT OCCURS BEFORE THAT POLICY'S NEXT
15 RENEWAL DATE OR THE POLICY'S CANCELLATION. As used in this sec-
16 tion, "ultimate loss" means the actual loss amounts ~~which~~ THAT
17 a member is obligated to pay and ~~which~~ THAT are paid or payable
18 by the member, and shall not include claim expenses. An ultimate
19 loss is incurred by the association on the date ~~which~~ THAT the
20 loss occurs.

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

24 (4) An insurer whose membership in the association has been
25 terminated by withdrawal shall continue to be bound by the plan
26 of operation, and upon withdrawal, all unpaid premiums ~~which~~

1 THAT have been charged to the withdrawing member shall be payable
2 as of the effective date of the withdrawal.

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

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

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

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

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

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

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

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

1 which the premium applies. As used in this subdivision, "car"
2 includes a motorcycle.

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

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

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

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

12 (g) Establish procedures for reviewing claims procedures and
13 practices of members of the association. If the claims proce-
14 dures or practices of a member are considered inadequate to prop-
15 erly service the liabilities of the association, the association
16 may undertake or may contract with another person, including
17 another member, to adjust or assist in the adjustment of claims
18 for the member on claims ~~which~~ THAT create a potential liabil-
19 ity to the association and may charge the cost of the adjustment
20 to the member.

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

23 (a) Sue and be sued in the name of the association. A judg-
24 ment against the association shall not create any direct liabil-
25 ity against the individual members of the association. The asso-
26 ciation may provide for the indemnification of its members,
27 members of the board of directors of the association, and

1 officers, employees, and other persons lawfully acting on behalf
2 of the association.

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

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

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

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

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

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

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

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

3 (a) The establishment of necessary facilities.

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

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

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

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

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

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

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

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

1 subsection (7)(d). Each director shall be entitled to 1 vote.

2 The initial term of office of a director shall be 2 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (24) ~~This section shall take effect on July 1, 1978.~~ The
19 association shall not have liability for losses occurring before
20 ~~the effective date of this section~~ JULY 1, 1978. THE ASSOCIA-
21 TION SHALL NOT HAVE LIABILITY FOR ULTIMATE LOSS ARISING OUT OF AN
22 INJURY THAT OCCURS UNDER A POLICY ISSUED OR RENEWED BY A MEMBER
23 EFFECTIVE ON AND AFTER JULY 1, 1999. THE ASSOCIATION SHALL CON-
24 TINUE TO HAVE LIABILITY FOR ULTIMATE LOSS ARISING OUT OF AN
25 INJURY THAT OCCURS UNDER A POLICY ISSUED OR RENEWED BY A MEMBER
26 EFFECTIVE BEFORE JULY 1, 1999 BUT ONLY FOR AN INJURY THAT OCCURS

1 BEFORE THAT POLICY'S NEXT RENEWAL DATE OR THE POLICY'S
2 CANCELLATION.

3 (25) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION,
4 ON AND AFTER JULY 1, 1999 THE ASSOCIATION IS ONLY AUTHORIZED TO
5 ASSESS MEMBERS TO RECOUP DEFICIENCIES AS PROVIDED IN
6 SUBSECTION (26).

7 (26) THE ASSOCIATION SHALL EVALUATE ANNUALLY THE ASSETS AND
8 LIABILITIES OF THE ASSOCIATION AND DETERMINE IF A DEFICIENCY
9 EXISTS. IF A DEFICIENCY DOES EXIST, THE ASSOCIATION, IN ACCORD-
10 ANCE WITH THE PLAN OF OPERATION, SHALL ASSESS MEMBERS ANNUALLY AS
11 FOLLOWS:

12 (A) IF THE DEFICIENCY IS LESS THAN \$100,000,000.00, THE FULL
13 AMOUNT OF THE DEFICIENCY.

14 (B) IF THE DEFICIENCY IS GREATER THAN OR EQUAL TO
15 \$100,000,000.00, THE GREATER OF \$100,000,000.00 OR 12% OF THE
16 DEFICIENCY.

17 (C) IF AN ASSESSMENT UNDER SUBDIVISION (A) OR (B) IS INSUF-
18 FICIENT TO PERMIT THE ASSOCIATION TO MEET ITS PAYMENTS, THEN THE
19 ASSESSMENT SHALL BE INCREASED TO AN AMOUNT SUFFICIENT TO MEET
20 THOSE PAYMENTS.

21 (27) THE ASSOCIATION SHALL REPORT TO THE COMMISSIONER AND TO
22 THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON
23 INSURANCE ISSUES BY OCTOBER 1, 2005 ON THE NUMBER OF EXISTING
24 CLAIMS, THE PROJECTED COST ASSOCIATED WITH THOSE CLAIMS, AND THE
25 AMOUNT OF RESERVES.

26 SEC. 3104A. (1) A NONPROFIT MUTUAL INSURANCE CORPORATION TO
27 BE KNOWN AS THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE

1 COMPANY IS CREATED UNDER THIS ACT TO REINSURE PERSONAL PROTECTION
2 INSURANCE CLAIMS THAT ARE FOR \$500,000.00 OR MORE FOR POLICIES
3 ISSUED OR RENEWED EFFECTIVE ON AND AFTER JULY 1, 1999.

4 (2) AN AUTOMOBILE INSURER SHALL RETAIN INDEMNIFICATION FOR
5 100% OF THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER PERSONAL PRO-
6 TECTION INSURANCE CLAIMS THAT ARE FOR UNDER \$500,000.00 IN EACH
7 LOSS OCCURRENCE. THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSUR-
8 ANCE COMPANY SHALL PROVIDE AND EACH INSURED SHALL ACCEPT COVERAGE
9 FOR 100% OF THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER PERSONAL
10 PROTECTION INSURANCE CLAIMS THAT ARE FOR \$500,000.00 OR MORE IN
11 EACH LOSS OCCURRENCE. AS USED IN THIS SECTION, "ULTIMATE LOSS"
12 MEANS THE ACTUAL LOSS AMOUNTS THAT ARE OBLIGATED TO BE PAID UNDER
13 AN AUTOMOBILE INSURANCE POLICY AND THIS ACT. AN ULTIMATE LOSS IS
14 INCURRED BY THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE
15 COMPANY ON THE DATE THAT THE LOSS OCCURS.

16 (3) AN INSURED MAY WITHDRAW FROM COVERAGE FROM THE MICHIGAN
17 ACCESS CATASTROPHIC MUTUAL INSURANCE COMPANY ONLY IF THE INDIVID-
18 UAL DOES NOT HAVE INSURANCE THAT PROVIDES THE SECURITY REQUIRED
19 BY SECTION 3101(1) OR 3103(1) IN THIS STATE.

20 (4) THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE COM-
21 PANY SHALL DO ALL OF THE FOLLOWING IN ADDITION TO OTHER DUTIES
22 AND RESPONSIBILITIES REQUIRED BY THIS ACT:

23 (A) ASSUME 100% OF ALL LIABILITY AS PROVIDED IN
24 SUBSECTION (2).

25 (B) ESTABLISH PROCEDURES BY WHICH INSURERS SHALL PROMPTLY
26 REPORT TO THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE
27 COMPANY EACH CLAIM WHICH, ON THE BASIS OF THE INJURIES OR DAMAGES

1 SUSTAINED, MAY REASONABLY BE ANTICIPATED TO INVOLVE THE MICHIGAN
2 ACCESS CATASTROPHIC MUTUAL INSURANCE COMPANY IF THE INSURER IS
3 ULTIMATELY HELD LEGALLY LIABLE FOR THE INJURIES OR DAMAGES.
4 SOLELY FOR THE PURPOSE OF REPORTING CLAIMS, THE INSURER SHALL IN
5 ALL INSTANCES CONSIDER ITSELF LEGALLY LIABLE FOR THE INJURIES OR
6 DAMAGES. THE INSURER SHALL ALSO ADVISE THE MICHIGAN ACCESS CATA-
7 STROPHIC MUTUAL INSURANCE COMPANY OF SUBSEQUENT DEVELOPMENTS
8 LIKELY TO MATERIALLY AFFECT THE INTEREST OF THE MICHIGAN ACCESS
9 CATASTROPHIC MUTUAL INSURANCE COMPANY IN THE CLAIM.

10 (C) MAINTAIN RELEVANT LOSS AND EXPENSE DATA RELATIVE TO ALL
11 LIABILITIES OF THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE
12 COMPANY AND REQUIRE EACH INSURER TO FURNISH STATISTICS, IN CON-
13 NECTION WITH LIABILITIES OF THE MICHIGAN ACCESS CATASTROPHIC
14 MUTUAL INSURANCE COMPANY.

15 (D) IN A MANNER PROVIDED FOR IN THE ARTICLES OF INCORPORA-
16 TION, CALCULATE AND CHARGE TO INSUREDS A TOTAL PREMIUM SUFFICIENT
17 TO COVER THE EXPECTED LOSSES AND EXPENSES OF THE MICHIGAN ACCESS
18 CATASTROPHIC MUTUAL INSURANCE COMPANY THAT THE MICHIGAN ACCESS
19 CATASTROPHIC MUTUAL INSURANCE COMPANY WILL LIKELY INCUR DURING
20 THE PERIOD FOR WHICH THE PREMIUM IS APPLICABLE. THE PREMIUM
21 SHALL INCLUDE AN AMOUNT TO COVER INCURRED BUT NOT REPORTED LOSSES
22 FOR THE PERIOD AND MAY BE ADJUSTED FOR ANY EXCESS OR DEFICIENT
23 PREMIUMS FROM PREVIOUS PERIODS. EXCESSES OR DEFICIENCIES FROM
24 PREVIOUS PERIODS MAY BE FULLY ADJUSTED IN A SINGLE PERIOD OR MAY
25 BE ADJUSTED OVER SEVERAL PERIODS IN A MANNER PROVIDED FOR IN THE
26 ARTICLES OF INCORPORATION.

1 (5) AN AUTOMOBILE INSURER SHALL COLLECT FROM ITS INSUREDS
2 THE PREMIUM ASSESSED BY THE MICHIGAN ACCESS CATASTROPHIC MUTUAL
3 INSURANCE COMPANY AND SHALL FORWARD THE PREMIUM PAYMENT ASSESSED
4 BY THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE COMPANY TO
5 THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE COMPANY.

6 (6) THE MICHIGAN ACCESS CATASTROPHIC MUTUAL INSURANCE COM-
7 PANY MAY REINSURE ALL OR ANY PORTION OF ITS POTENTIAL LIABILITY
8 WITH REINSURERS LICENSED TO TRANSACT INSURANCE IN THIS STATE OR
9 APPROVED BY THE COMMISSIONER AND SHALL ACHIEVE AND RETAIN A
10 RATING OF NOT LESS THAN "A" WITH A.M. BEST COMPANY, INC.