

SENATE BILL NO. 1297

September 16, 1998, Introduced by Senator PETERS and referred to the Committee on Financial Services.

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 ANNUAL
5 premium OF NOT MORE THAN \$10.00 PER CAR. THE TOTAL PREMIUM SHALL
6 BE sufficient to cover the expected losses and expenses ~~of the~~
7 ~~association which~~ THAT the association will likely incur during
8 the period for which the premium is applicable. IF IT APPEARS TO
9 THE ASSOCIATION THAT THE \$10.00 ANNUAL PREMIUM PER CAR IS NOT
10 SUFFICIENT TO COVER THE ASSOCIATION'S EXPECTED LOSSES AND
11 EXPENSES, THE ASSOCIATION SHALL SUBMIT TO THE COMMISSIONER AND
12 THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON
13 INSURANCE ISSUES A REQUEST TO INCREASE THE ANNUAL PREMIUM FOR THE
14 YEAR, THE AMOUNT OF THE INCREASE, AND THE REASONS NECESSITATING
15 THE INCREASE. IF THE LEGISLATURE BY CONCURRENT RESOLUTION AND
16 THE COMMISSIONER APPROVE THE INCREASE, THE ASSOCIATION MAY
17 INCREASE THE PREMIUM FOR THE PERIOD THAT IS THE SUBJECT OF THE
18 REQUEST. The premium shall include an amount to cover incurred
19 but not reported losses for the period and may be adjusted for
20 any excess or deficient premiums from previous periods. Excesses
21 or deficiencies from previous periods may be fully adjusted in a
22 single period or may be adjusted over several periods in a manner
23 provided for in the plan of operation. Each member shall be
24 charged an amount equal to that member's total earned car years
25 of insurance providing the security required by section 3101(1)
26 or 3103(1), or both, written in this state during the period to
27 which the premium applies, multiplied by the average premium per

1 car. The average premium per car shall be the total premium
2 calculated divided by the total earned car years of insurance
3 providing the security required by section 3101(1) or 3103(1)
4 written in this state of all members during the period to which
5 the premium applies. As used in this subdivision, "car" includes
6 a motorcycle.

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

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

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

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

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

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

1 (a) Sue and be sued in the name of the association. A
2 judgment against the association shall not create any direct
3 liability against the individual members of the association. The
4 association may provide for the indemnification of its members,
5 members of the board of directors of the association, and offi-
6 cers, employees, and other persons lawfully acting on behalf of
7 the association.

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

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

14 (d) Pursuant to the plan of operation, adopt reasonable
15 rules for the administration of the association, enforce those
16 rules, and delegate authority, as the board considers necessary
17 to assure the proper administration and operation of the associa-
18 tion consistent with the plan of operation.

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

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

25 (g) Perform other acts not specifically enumerated in this
26 section ~~which~~ THAT are necessary or proper to accomplish the

1 purposes of the association and ~~which~~ THAT are not inconsistent
2 with this section or the plan of operation.

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

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

9 (a) The establishment of necessary facilities.

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

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

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

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

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

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

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

25 (11) ~~Not more than 30 days after the effective date of this~~
26 ~~section, the commissioner shall convene an organizational meeting~~
27 ~~of the board. The board shall be initially composed of 5 members~~

~~1 of the association appointed by the commissioner to serve as~~
~~2 directors, and the commissioner or a designated representative of~~
~~3 the commissioner serving as an ex officio member of the board~~
~~4 without vote. The initial board and each successor~~ EACH board
5 shall include 5 members ~~which~~ THAT would contribute a total of
6 not less than 40% of the total premium calculated pursuant to
7 subsection (7)(d). Each director shall be entitled to 1 vote.
8 The initial term of office of a director shall be 2 years.

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

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

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

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

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

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

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

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

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

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

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

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

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