

HOUSE BILL No. 5798

March 14, 2002, Introduced by Reps. Schauer, Jacobs, Kolb, Woodward, Minore, Rison, Clark, Garza, Gielegem, Callahan, Lockwood, O'Neil, Frank, Bogardus, Jamnick, Neumann, Sheltroun, Switalski, Hale, Rivet, Anderson, Waters, Quarles, Wojno, Williams, Lipsey, Whitmer, Adamini, Plakas, Phillips, Rich Brown, Bob Brown, Reeves, Hardman, Schermesser, Basham, Zelenko, Spade, Mans, Thomas, Daniels, Bovin, Murphy and McConico and referred to the Committee on Insurance and Financial Services.

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 2001 PA 3.

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3 act repealed by this act is valid until its original expiration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, MCL
12 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.

(b) The Michigan basic property insurance association created under ~~section~~ CHAPTER 29.

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

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

(e) The Michigan life and health insurance guaranty association created under chapter 77.

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

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

Sec. 3104. (1) An unincorporated, nonprofit association to be known as the catastrophic claims 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~~ IS 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 premiums under subsection (7)(d). Except as expressly provided in this section, the association is not subject to any laws of this state with respect to insurers, but in all other respects the association is subject

1 to the laws of this state to the extent that the association
2 would be if it were an insurer organized and subsisting under
3 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 the following amounts in each loss occurrence:

8 (a) For a motor vehicle accident policy issued or renewed
9 before July 1, 2002, \$250,000.00.

10 (b) For a motor vehicle accident policy issued or renewed
11 during the period July 1, 2002 to June 30, 2003, \$300,000.00.

12 (c) For a motor vehicle accident policy issued or renewed
13 during the period July 1, 2003 to June 30, 2004, \$325,000.00.

14 (d) For a motor vehicle accident policy issued or renewed
15 during the period July 1, 2004 to June 30, 2005, \$350,000.00.

16 (e) For a motor vehicle accident policy issued or renewed
17 during the period July 1, 2005 to June 30, 2006, \$375,000.00.

18 (f) For a motor vehicle accident policy issued or renewed
19 during the period July 1, 2006 to June 30, 2007, \$400,000.00.

20 (g) For a motor vehicle accident policy issued or renewed
21 during the period July 1, 2007 to June 30, 2008, \$420,000.00.

22 (h) For a motor vehicle accident policy issued or renewed
23 during the period July 1, 2008 to June 30, 2009, \$440,000.00.

24 (i) For a motor vehicle accident policy issued or renewed
25 during the period July 1, 2009 to June 30, 2010, \$460,000.00.

26 (j) For a motor vehicle accident policy issued or renewed
27 during the period July 1, 2010 to June 30, 2011, \$480,000.00.

(k) For a motor vehicle accident policy issued or renewed during the period July 1, 2011 to June 30, 2013, \$500,000.00. Beginning July 1, 2013, this \$500,000.00 amount shall be increased biennially on July 1 of each odd-numbered year, for policies issued or renewed before July 1 of the following odd-numbered year, by the lesser of 6% or the consumer price index, and rounded to the nearest \$5,000.00. This biennial adjustment shall be calculated by the association by January 1 of the year of its July 1 effective date.

(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 are 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 has 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

1 this state, the member and successors in interest of the member
2 remain liable for the member's obligations.

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

5 (a) Assume 100% of all liability as provided in subsection
6 (2).

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

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

22 (d) In a manner provided for in the plan of operation, cal-
23 culate and charge to members of the association a total premium
24 sufficient to cover the expected losses and expenses of the asso-
25 ciation that the association will likely incur during the period
26 for which the premium is applicable. The premium shall include
27 an amount to cover incurred but not reported losses for the

1 period and may be adjusted for any excess or deficient premiums
2 from previous periods. Excesses or deficiencies from previous
3 periods may be fully adjusted in a single period or may be
4 adjusted over several periods in a manner provided for in the
5 plan of operation. Each member shall be charged an amount equal
6 to that member's total written car years of insurance providing
7 the security required by section 3101(1) or 3103(1), or both,
8 written in this state during the period to which the premium
9 applies, multiplied by the average premium per car. The average
10 premium per car shall be the total premium calculated divided by
11 the total written car years of insurance providing the security
12 required by section 3101(1) or 3103(1) written in this state of
13 all members during the period to which the premium applies. As
14 used in this subdivision, "car" includes a motorcycle.

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

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

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

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

24 (g) Establish procedures for reviewing claims procedures and
25 practices of members of the association. If the claims proce-
26 dures or practices of a member are considered inadequate to
27 properly service the liabilities of the association, the

1 association may undertake or may contract with another person,
2 including another member, to adjust or assist in the adjustment
3 of claims for the member on claims that create a potential
4 liability to the association and may charge the cost of the
5 adjustment to the member.

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

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

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

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

21 (d) Pursuant to the plan of operation, adopt reasonable
22 rules for the administration of the association, enforce those
23 rules, and delegate authority, as the board considers necessary
24 to assure the proper administration and operation of the associa-
25 tion consistent with the plan of operation.

26 (e) Contract for goods and services, including independent
27 claims management, actuarial, investment, and legal services,

1 from others within or without this state to assure the efficient
2 operation of the association.

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

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

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

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

15 (a) The establishment of necessary facilities.

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

17 (c) Procedures to be utilized in charging premiums, includ-
18 ing adjustments from excess or deficient premiums from prior
19 periods.

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

22 (e) Reimbursement of each member of the board by the associ-
23 ation for actual and necessary expenses incurred on association
24 business.

25 (f) The investment policy of the association.

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

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

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

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

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

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

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

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

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

24 (19) The proposed plan of operation or amendments to the
25 plan of operation are subject to majority approval by the board,
26 ratified by a majority of the membership having a vote, with
27 voting rights being apportioned according to the premiums charged

1 in subsection (7)(d) and are subject to approval by the
2 commissioner.

3 (20) Upon approval by the commissioner and ratification by
4 the members of the plan submitted, or upon the promulgation of a
5 plan by the commissioner, each insurer authorized to write insur-
6 ance providing the security required by section 3101(1) in this
7 state, as provided in this section, is bound by and shall for-
8 mally subscribe to and participate in the plan approved as a con-
9 dition of maintaining its authority to transact insurance in this
10 state.

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

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

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

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

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

25 (26) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF,
26 OR RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL

1 FUNCTION IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976
2 PA 442, MCL 15.231 TO 15.246.

3 (27) ~~-(25)-~~ As used in this section:

4 (a) "Consumer price index" means the percentage of change in
5 the consumer price index for all urban consumers in the United
6 States city average for all items for the 24 months prior to
7 October 1 of the year prior to the July 1 effective date of the
8 biennial adjustment under subsection (2)(k) as reported by the
9 United States department of labor, bureau of labor statistics,
10 and as certified by the commissioner.

11 (b) "Motor vehicle accident policy" means a policy providing
12 the coverages required under section 3101(1).

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

17 Enacting section 1. This amendatory act does not take
18 effect unless Senate Bill No. _____ or House Bill No. 5800
19 (request no. 06189'01 a) of the 91st Legislature is enacted into
20 law.