

# HOUSE BILL No. 5799

March 14, 2002, Introduced by Reps. Bernero, Jacobs, Schauer, Mans, Spade, Wojno, Waters, Plakas, Anderson, Woodward, Minore, Rison, Clark, Garza, Gielegem, Callahan, Lockwood, O'Neil, Frank, Bogardus, Jamnick, Neumann, Sheltroun, Switalski, Pestka, Hale, Rivet, Quarles, Williams, Lipsey, Whitmer, Adamini, Phillips, Rich Brown, Bob Brown, Reeves, Hardman, Schermesser, Basham, Daniels, Thomas, Bovin, Zelenko, 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 section 3104 (MCL 500.3104), as amended by 2001 PA  
3.

**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 that provide the security required  
5 by section 3101(1) within this state, as a condition of its  
6 authority to transact insurance in this state, shall be a member  
7 of the association and shall be bound by the plan of operation of  
8 the association. Each insurer engaged in writing insurance  
9 coverages that provide the security required by section 3103(1)  
10 within this state, as a condition of its authority to transact

1 insurance in this state, shall be considered a member of the  
2 association, but only for purposes of premiums under subsection  
3 (7)(d). Except as expressly provided in this section, the asso-  
4 ciation is not subject to any laws of this state with respect to  
5 insurers, but in all other respects the association is subject to  
6 the laws of this state to the extent that the association would  
7 be if it were an insurer organized and subsisting under chapter  
8 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 the following amounts in each loss occurrence:

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

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

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

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

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

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

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

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

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

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

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

16 (3) An insurer may withdraw from the association only upon  
17 ceasing to write insurance that provides the security required by  
18 section 3101(1) in this state.

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

24 (5) An unsatisfied net liability to the association of an  
25 insolvent member shall be assumed by and apportioned among the  
26 remaining members of the association as provided in the plan of  
27 operation. The association has all rights allowed by law on

1 behalf of the remaining members against the estate or funds of  
2 the insolvent member for sums due the association.

3 (6) If a member has been merged or consolidated into another  
4 insurer or another insurer has reinsured a member's entire busi-  
5 ness that provides the security required by section 3101(1) in  
6 this state, the member and successors in interest of the member  
7 remain liable for the member's obligations.

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

10 (a) Assume 100% of all liability as provided in subsection  
11 (2).

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

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

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

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

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

26           (ii) Require payment of the premiums to be made periodically  
27 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 that create a potential liability to the  
10 association and may charge the cost of the adjustment to the  
11 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 that are necessary or proper to accomplish the purposes  
14 of the association and that are not inconsistent with this sec-  
15 tion 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) Procedures to be utilized in charging premiums, includ-  
25 ing adjustments from excess or deficient premiums from prior  
26 periods.

1 (d) Procedures governing the actual payment of premiums to  
2 the association.

3 (e) Reimbursement of each member of the board by the associ-  
4 ation for actual and necessary expenses incurred on association  
5 business.

6 (f) The investment policy of the association.

7 (g) Any other matters required by or necessary to effec-  
8 tively implement this section.

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

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

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

23 (14) Each director shall be appointed by the commissioner  
24 and shall serve until that member's successor is selected and  
25 qualified. The chairperson of the board shall be elected by the  
26 board. A vacancy on the board shall be filled by the  
27 commissioner consistent with the plan of operation.

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

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

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

19 (18) The plan of operation, unless approved sooner in writ-  
20 ing, shall be considered to meet the requirements of this section  
21 if it is not disapproved by written order of the commissioner  
22 within 30 days after the date of its submission. Before disap-  
23 proval of all or any part of the proposed plan of operation, the  
24 commissioner shall notify the board in what respect the plan of  
25 operation fails to meet the requirements and objectives of this  
26 section. If the board fails to submit a revised plan of  
27 operation that meets the requirements and objectives of this

1 section within the 30-day period, the commissioner shall enter an  
2 order accordingly and shall immediately formulate and place into  
3 effect a plan consistent with the requirements and objectives of  
4 this section.

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

11 (20) Upon approval by the commissioner and ratification by  
12 the members of the plan submitted, or upon the promulgation of a  
13 plan by the commissioner, each insurer authorized to write insur-  
14 ance providing the security required by section 3101(1) in this  
15 state, as provided in this section, is bound by and shall for-  
16 mally subscribe to and participate in the plan approved as a con-  
17 dition of maintaining its authority to transact insurance in this  
18 state.

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

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

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

1           (24) THE AUDITOR GENERAL OR A CERTIFIED PUBLIC ACCOUNTANT  
2 APPOINTED BY THE AUDITOR GENERAL ANNUALLY SHALL CONDUCT AND REMIT  
3 TO THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON  
4 INSURANCE ISSUES AN AUDIT OF THE ASSOCIATION. IN CONDUCTING THE  
5 AUDIT, THE AUDITOR GENERAL OR APPOINTED CERTIFIED PUBLIC ACCOUN-  
6 TANT SHALL HAVE ACCESS TO ALL RECORDS OF THE ASSOCIATION. EACH  
7 AUDIT REQUIRED BY THIS SUBSECTION SHALL INCLUDE A DETERMINATION  
8 OF WHETHER THE ASSOCIATION IS LIKELY TO BE ABLE TO CONTINUE TO  
9 MEET ITS OBLIGATIONS.

10           (25) ~~(24)~~ The association does not have liability for  
11 losses occurring before July 1, 1978.

12           (26) ~~(25)~~ As used in this section:

13           (a) "Consumer price index" means the percentage of change in  
14 the consumer price index for all urban consumers in the United  
15 States city average for all items for the 24 months prior to  
16 October 1 of the year prior to the July 1 effective date of the  
17 biennial adjustment under subsection (2)(k) as reported by the  
18 United States department of labor, bureau of labor statistics,  
19 and as certified by the commissioner.

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

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