

SENATE BILL No. 161

January 29, 2009, Introduced by Senators ANDERSON, GLEASON, OLSHOVE, SWITALSKI, BRATER, CLARK-COLEMAN, JACOBS and HUNTER and referred to the Committee on Economic Development and Regulatory Reform.

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 2002 PA 662.

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3 act repealed by this act is valid until its original expiration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

1 retroactively to the date of its original adoption or levy and
2 ~~shall continue~~ **CONTINUES** in force and effect according to the terms
3 of the plan of operation, premium, or assessment until otherwise
4 changed by the commissioner or the board of directors of the
5 association or facility pursuant to this act.

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

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

14 (5) Any premium or assessment levied by an association or
15 facility, or any premium or assessment of a similar association or
16 facility formed under a law in force outside this state, is not a
17 burden or special burden for purposes of a calculation under
18 section 476a, and any premium or assessment paid to an association
19 or facility shall not be included in determining the aggregate
20 amount a foreign insurer pays to the commissioner under section
21 476a.

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

27 (a) The Michigan worker's compensation placement facility

1 created under chapter 23.

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

4 (c) The catastrophic claims association created under chapter
5 31.

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

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

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

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

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

1 to the extent that the association would be if it were an insurer
2 organized and subsisting under chapter 50.

3 (2) The association shall provide and each member shall accept
4 indemnification for 100% of the amount of ultimate loss sustained
5 under personal protection insurance coverages in excess of the
6 following amounts in each loss occurrence:

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

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

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

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

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

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

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

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

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

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

27 (k) For a motor vehicle accident policy issued or renewed

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

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

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

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

23 (6) If a member has been merged or consolidated into another
24 insurer or another insurer has reinsured a member's entire business
25 that provides the security required by section 3101(1) in this
26 state, the member and successors in interest of the member remain
27 liable for the member's obligations.

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

3 (a) Assume 100% of all liability as provided in subsection
4 (2).

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

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

19 (d) In a manner provided for in the plan of operation **AND**
20 **SUBJECT TO THE COMMISSIONER'S APPROVAL**, calculate and charge to
21 members of the association a total premium sufficient to cover the
22 expected losses and expenses of the association that the
23 association will likely incur during the period for which the
24 premium is applicable. **THE COMMISSIONER MAY DISAPPROVE ANY TOTAL**
25 **PREMIUM AMOUNT THAT THE COMMISSIONER CONSIDERS TO BE EXCESSIVE.** The
26 premium shall include an amount to cover incurred but not reported
27 losses for the period and may be adjusted for any excess or

1 deficient premiums from previous periods. Excesses or deficiencies
2 from previous periods may be fully adjusted in a single period or
3 may be adjusted over several periods in a manner provided for in
4 the plan of operation. Each member shall be charged an amount equal
5 to that member's total written car years of insurance providing the
6 security required by section 3101(1) or 3103(1), or both, written
7 in this state during the period to which the premium applies,
8 multiplied by the average premium per car. The average premium per
9 car shall be the total premium calculated divided by the total
10 written car years of insurance providing the security required by
11 section 3101(1) or 3103(1) written in this state of all members
12 during the period to which the premium applies. A member shall be
13 charged a premium for a historic vehicle that is insured with the
14 member of 20% of the premium charged for a car insured with the
15 member. As used in this subdivision:

16 (i) "Car" includes a motorcycle but does not include a historic
17 vehicle.

18 (ii) "Historic vehicle" means a vehicle that is a registered
19 historic vehicle under section 803a or 803p of the Michigan vehicle
20 code, 1949 PA 300, MCL 257.803a and 257.803p.

21 (e) Require and accept the payment of premiums from members of
22 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 after
25 the premium charge.

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

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

3 (g) Establish procedures for reviewing claims procedures and
4 practices of members of the association. If the claims procedures
5 or practices of a member are considered inadequate to properly
6 service the liabilities of the association, the association may
7 undertake or may contract with another person, including another
8 member, to adjust or assist in the adjustment of claims for the
9 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 section,
13 the association may do all of the following:

14 (a) Sue and be sued in the name of the association. A judgment
15 against the association shall not create any direct liability
16 against the individual members of the association. The association
17 may provide for the indemnification of its members, members of the
18 board of directors of the association, and officers, employees, and
19 other persons lawfully acting on behalf of the association.

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

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

26 (d) Pursuant to the plan of operation, adopt reasonable rules
27 for the administration of the association, enforce those rules, and

1 delegate authority, as the board considers necessary to assure the
2 proper administration and operation of the association consistent
3 with the plan of operation.

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

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

10 (g) Perform other acts not specifically enumerated in this
11 section that are necessary or proper to accomplish the purposes of
12 the association and that are not inconsistent with this section or
13 the plan of operation.

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

18 (10) The plan of operation shall provide for all of the
19 following:

20 (a) The establishment of necessary facilities.

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

22 (c) Procedures to be utilized in charging premiums, including
23 adjustments from excess or deficient premiums from prior periods.

24 (d) Procedures governing the actual payment of premiums to the
25 association.

26 (e) Reimbursement of each member of the board by the
27 association for actual and necessary expenses incurred on

1 association business.

2 (f) The investment policy of the association.

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

5 (11) Each board shall include members that would contribute a
6 total of not less than 40% of the total premium calculated pursuant
7 to subsection (7) (d) **AND 1 MEMBER REPRESENTING THE GENERAL PUBLIC.**
8 Each director shall be entitled to 1 vote. The initial term of
9 office of a director shall be 2 years.

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

17 (13) The board shall consist of ~~5-6~~ directors, and the
18 commissioner **WHO** shall be ~~an ex-officio~~ **A VOTING** member of the
19 board. ~~without vote.~~

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

25 (15) After the board is appointed, the board shall meet as
26 often as the chairperson, the commissioner, or the plan of
27 operation shall require, or at the request of any 3 members of the

1 board. The chairperson shall retain the right to vote on all
2 issues. Four members of the board constitute a quorum.

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

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

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

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

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

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

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

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

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

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

27 **(26) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR**

1 RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNCTION IS
2 SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231
3 TO 15.246.

4 (27) AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT APPOINTED BY
5 THE COMMISSIONER SHALL ANNUALLY CONDUCT AND DELIVER TO THE
6 COMMISSIONER AND THE SENATE AND HOUSE OF REPRESENTATIVES STANDING
7 COMMITTEES ON INSURANCE ISSUES AN AUDIT OF THE ASSOCIATION. IN
8 CONDUCTING THE AUDIT, THE APPOINTED CERTIFIED PUBLIC ACCOUNTANT
9 SHALL HAVE ACCESS TO ALL RECORDS OF THE ASSOCIATION. EACH AUDIT
10 REQUIRED BY THIS SUBSECTION SHALL INCLUDE A DETERMINATION OF
11 WHETHER THE ASSOCIATION IS LIKELY TO BE ABLE TO CONTINUE TO MEET
12 ITS OBLIGATIONS.

13 (28) ~~(25)~~As used in this section:

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

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

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

27 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. 160

2 of the 95th Legislature is enacted into law.