

HOUSE BILL No. 4455

March 17, 2011, Introduced by Rep. Shaughnessy and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3171, 3172, 3173a, 3174, 3175, 3320, and 3330 (MCL 500.3171, 500.3172, 500.3173a, 500.3174, 500.3175, 500.3320, and 500.3330), sections 3172 and 3175 as amended and section 3173a as added by 1984 PA 426 and section 3320 as amended by 1980 PA 461.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3171. (1) ~~The~~**UNTIL AN ASSIGNED CLAIMS PLAN IS APPROVED**
2 **UNDER SUBSECTION (3) AND FILED WITH THE SECRETARY OF STATE, THE**
3 secretary of state shall organize and maintain an assigned claims
4 facility and plan. A self-insurer and insurer writing insurance as
5 provided by this chapter in this state shall participate in the
6 assigned claims plan. Costs incurred in the operation of the
7 facility and the plan shall be allocated fairly among insurers and
8 self-insurers. The secretary of state shall promulgate rules to

1 implement the facility and plan in accordance with and subject to
2 ~~Act No. 306 of the Public Acts of 1969, as amended, being sections~~
3 ~~24.201 to 24.315 of the Compiled Laws of 1948~~ THE ADMINISTRATIVE
4 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

5 (2) THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY SHALL
6 ADOPT AND MAINTAIN AN ASSIGNED CLAIMS PLAN. A SELF-INSURER AND
7 INSURER WRITING INSURANCE AS PROVIDED BY THIS CHAPTER IN THIS STATE
8 SHALL PARTICIPATE IN THE ASSIGNED CLAIMS PLAN. COSTS INCURRED IN
9 THE ADMINISTRATION OF THE ASSIGNED CLAIMS PLAN SHALL BE ALLOCATED
10 FAIRLY AMONG INSURERS AND SELF-INSURERS. UPON APPROVAL AND FILING
11 WITH THE SECRETARY OF STATE UNDER SUBSECTION (3), THE MICHIGAN
12 AUTOMOBILE INSURANCE PLACEMENT FACILITY SHALL IMPLEMENT THE
13 ASSIGNED CLAIMS PLAN.

14 (3) THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY BOARD
15 OF GOVERNORS SHALL ADOPT AN ASSIGNED CLAIMS PLAN BY MAJORITY VOTE
16 AND SHALL SUBMIT IT TO THE COMMISSIONER FOR HIS OR HER APPROVAL. IF
17 THE COMMISSIONER FINDS THAT THE PLAN MEETS THE REQUIREMENTS OF THIS
18 CHAPTER, HE OR SHE SHALL APPROVE IT. IF THE COMMISSIONER FINDS THAT
19 THE PLAN FAILS TO MEET THE REQUIREMENTS OF THIS CHAPTER, HE OR SHE
20 SHALL STATE IN WHAT RESPECTS THE PLAN IS DEFICIENT AND SHALL AFFORD
21 THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY BOARD OF
22 GOVERNORS 10 DAYS WITHIN WHICH TO CORRECT THE DEFICIENCY. IF THE
23 COMMISSIONER AND THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT
24 FACILITY BOARD OF GOVERNORS FAIL TO AGREE THAT THE PROVISIONS OF
25 THE PLAN SO SUBMITTED MEET THE REQUIREMENTS OF THIS CHAPTER, EITHER
26 PARTY TO THE CONTROVERSY MAY SUBMIT THE ISSUE TO THE CIRCUIT COURT
27 FOR INGHAM COUNTY FOR A DETERMINATION. IF THE COMMISSIONER FAILS TO

1 RENDER A WRITTEN DECISION ON THE ASSIGNED CLAIMS PLAN WITHIN 30
2 DAYS AFTER RECEIPT OF THE PLAN, THE PLAN SHALL BE CONSIDERED
3 APPROVED. THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY
4 SHALL FILE A PLAN APPROVED UNDER THIS SUBSECTION WITH THE SECRETARY
5 OF STATE. THE PLAN TAKES EFFECT UPON BEING FILED WITH THE SECRETARY
6 OF STATE.

7 (4) AMENDMENTS TO THE ASSIGNED CLAIMS PLAN ARE SUBJECT TO
8 MAJORITY APPROVAL BY THE BOARD OF GOVERNORS AND ARE SUBJECT TO THE
9 COMMISSIONER'S APPROVAL AS PROVIDED IN SUBSECTION (3).

10 (5) AS USED IN THIS SECTION:

11 (A) "MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY" MEANS
12 THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY CREATED UNDER
13 CHAPTER 33.

14 (B) "MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY BOARD OF
15 GOVERNORS" MEANS THE BOARD OF GOVERNORS CREATED PURSUANT TO SECTION
16 3310.

17 Sec. 3172. (1) A person entitled to claim because of
18 accidental bodily injury arising out of the ownership, operation,
19 maintenance, or use of a motor vehicle as a motor vehicle in this
20 state may obtain personal protection insurance benefits through an
21 assigned claims plan if no personal protection insurance is
22 applicable to the injury, no personal protection insurance
23 applicable to the injury can be identified, the personal protection
24 insurance applicable to the injury cannot be ascertained because of
25 a dispute between 2 or more automobile insurers concerning their
26 obligation to provide coverage or the equitable distribution of the
27 loss, or the only identifiable personal protection insurance

1 applicable to the injury is, because of financial inability of 1 or
2 more insurers to fulfill their obligations, inadequate to provide
3 benefits up to the maximum prescribed. In such case unpaid benefits
4 due or coming due are subject to being collected under the assigned
5 claims plan, and the insurer to which the claim is assigned ~~or~~
6 ~~the assigned claims facility if the claim is assigned to it,~~ is
7 entitled to reimbursement from the defaulting insurers to the
8 extent of their financial responsibility.

9 (2) Except as otherwise provided in this subsection, personal
10 protection insurance benefits, including benefits arising from
11 accidents occurring before the effective date of this subsection,
12 payable through ~~an~~ **THE** assigned claims plan shall be reduced to the
13 extent that benefits covering the same loss are available from
14 other sources, regardless of the nature or number of benefit
15 sources available and regardless of the nature or form of the
16 benefits, to a person claiming personal protection insurance
17 benefits through the assigned claims plan. This subsection shall
18 only apply when the personal protection insurance benefits are
19 payable through the assigned claims plan because no personal
20 protection insurance is applicable to the injury, no personal
21 protection insurance applicable to the injury can be identified, or
22 the only identifiable personal protection insurance applicable to
23 the injury is, because of financial inability of 1 or more insurers
24 to fulfill their obligations, inadequate to provide benefits up to
25 the maximum prescribed. As used in this subsection, "sources" and
26 "benefit sources" do not include the program for medical assistance
27 for the medically indigent under the social welfare act, ~~Act No.~~

1 ~~280 of the Public Acts of 1939, being sections 400.1 to 400.121 of~~
2 ~~the Michigan Compiled Laws 1939 PA 280, MCL 400.1 TO 400.119B, or~~
3 insurance under the health insurance for the aged act, title XVIII
4 of the social security ~~amendments of 1965~~ **ACT, 42 USC 1395 TO**
5 **1395III.**

6 (3) If the obligation to provide personal protection insurance
7 benefits cannot be ascertained because of a dispute between 2 or
8 more automobile insurers concerning their obligation to provide
9 coverage or the equitable distribution of the loss, and if a method
10 of voluntary payment of benefits cannot be agreed upon among or
11 between the disputing insurers, all of the following shall apply:

12 (a) The insurers who are parties to the dispute shall, or the
13 claimant may, immediately notify the ~~assigned claims~~ **MICHIGAN**
14 **AUTOMOBILE INSURANCE PLACEMENT** facility of their inability to
15 determine their statutory obligations.

16 (b) The claim shall be assigned by the ~~assigned claims~~
17 **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT** facility to an insurer
18 which shall immediately provide personal protection insurance
19 benefits to the claimant or claimants entitled to benefits.

20 (c) An action shall be immediately commenced on behalf of the
21 ~~assigned claims~~ **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT** facility by
22 the insurer to whom the claim is assigned in circuit court for the
23 purpose of declaring the rights and duties of any interested party.

24 (d) The insurer to whom the claim is assigned shall join as
25 parties defendant each insurer disputing either the obligation to
26 provide personal protection insurance benefits or the equitable
27 distribution of the loss among the insurers.

1 (e) The circuit court shall declare the rights and duties of
2 any interested party whether or not other relief is sought or could
3 be granted.

4 (f) After hearing the action, the circuit court shall
5 determine the insurer or insurers, if any, obligated to provide the
6 applicable personal protection insurance benefits and the equitable
7 distribution, if any, among the insurers obligated therefor, and
8 shall order reimbursement to the ~~assigned claims~~ **MICHIGAN**
9 **AUTOMOBILE INSURANCE PLACEMENT** facility from the insurer or
10 insurers to the extent of the responsibility as determined by the
11 court. The reimbursement ordered under this subdivision shall
12 include all benefits and costs paid or incurred by the ~~assigned~~
13 ~~claims~~ **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT** facility and all
14 benefits and costs paid or incurred by insurers determined not to
15 be obligated to provide applicable personal protection insurance
16 benefits, including reasonable attorney fees and interest at the
17 rate prescribed in section 3175 as of December 31 of the year
18 preceding the determination of the circuit court.

19 Sec. 3173a. The ~~assigned claims~~ **MICHIGAN AUTOMOBILE INSURANCE**
20 **PLACEMENT** facility shall make an initial determination of the
21 claimant's eligibility for benefits under the assigned claims plan
22 and shall deny an obviously ineligible claim. The claimant shall be
23 notified promptly in writing of the denial and the reasons for the
24 denial.

25 Sec. 3174. A person claiming through an ~~an~~ **THE** assigned claims
26 plan shall notify the **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT**
27 facility of his **OR HER** claim within the time that would have been

1 allowed for filing an action for personal protection insurance
2 benefits if identifiable coverage applicable to the claim had been
3 in effect. The **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT** facility
4 shall promptly assign the claim in accordance with the plan and
5 notify the claimant of the identity and address of the insurer to
6 which the claim is assigned, or of the **MICHIGAN AUTOMOBILE**
7 **INSURANCE PLACEMENT** facility if the claim is assigned to it. An
8 action by the claimant shall not be commenced more than 30 days
9 after receipt of notice of the assignment or the last date on which
10 the action could have been commenced against an insurer of
11 identifiable coverage applicable to the claim, whichever is later.

12 Sec. 3175. (1) The assignment of claims shall be made
13 according to ~~rules~~ **PROCEDURES ESTABLISHED IN THE ASSIGNED CLAIMS**
14 **PLAN** that assure fair allocation of the burden of assigned claims
15 among insurers doing business in this state on a basis reasonably
16 related to the volume of automobile liability and personal
17 protection insurance they write on motor vehicles or of the number
18 of self-insured motor vehicles. An insurer to whom claims have been
19 assigned shall make prompt payment of loss in accordance with this
20 act and is thereupon entitled to reimbursement by the ~~assigned~~
21 ~~claims~~ **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT** facility for the
22 payments and the established loss adjustment cost, together with an
23 amount determined by use of the average annual 90-day United States
24 treasury bill yield rate, as reported by the council of economic
25 advisers as of December 31 of the year for which reimbursement is
26 sought, as follows:

27 (a) For the calendar year in which claims are paid by the

1 insurer, the amount shall be determined by applying the specified
2 annual yield rate specified in this subsection to 1/2 of the total
3 claims payments and loss adjustment costs.

4 (b) For the period from the end of the calendar year in which
5 claims are paid by the insurer to the date payments for the
6 operation of the ~~assigned claims facility and the assigned claims~~
7 plan are due, the amount will be determined by applying the annual
8 yield rate specified in this subsection to the total claims
9 payments and loss adjustment costs multiplied by a fraction the
10 denominator of which is 365 and the numerator of which is equal to
11 the number of days that have elapsed between the end of the
12 calendar year and the date payments for the operation of the
13 ~~assigned claims facility and the assigned claims~~ plan are due.

14 (2) The insurer to whom claims have been assigned shall
15 preserve and enforce rights to indemnity or reimbursement against
16 third parties and account to the ~~assigned claims~~ **MICHIGAN**
17 **AUTOMOBILE INSURANCE PLACEMENT** facility therefor and shall assign
18 such rights to the ~~assigned claims~~ **MICHIGAN AUTOMOBILE INSURANCE**
19 **PLACEMENT** facility upon reimbursement by the ~~assigned claims~~
20 **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT** facility. This section
21 shall not preclude an insurer from entering into reasonable
22 compromises and settlements with third parties against whom rights
23 to indemnity or reimbursement exist. The insurer shall account to
24 the ~~assigned claims~~ **MICHIGAN AUTOMOBILE INSURANCE PLACEMENT**
25 facility for such compromises and settlements. The ~~rules~~
26 ~~promulgated under section 3171 shall include a rule establishing~~
27 **PROCEDURES ESTABLISHED UNDER THE ASSIGNED CLAIMS PLAN SHALL**

1 **ESTABLISH** reasonable standards for enforcing rights to indemnity or
2 reimbursement against third parties, including a standard
3 establishing a value for such rights below which actions to
4 preserve and enforce the rights need not be pursued.

5 (3) An action to enforce rights to indemnity or reimbursement
6 against a third party shall not be commenced after the later of 2
7 years after the assignment of the claim to the insurer or 1 year
8 after the date of the last payment to the claimant.

9 (4) Payments for the operation of the assigned claims ~~facility~~
10 ~~and~~ plan not paid by the due date shall bear interest at the rate
11 of 20% per annum.

12 (5) The ~~secretary of state through the~~ **MICHIGAN AUTOMOBILE**
13 **INSURANCE PLACEMENT** facility may enter into a written agreement
14 with the debtor permitting the payment of the judgment or
15 acknowledgment of debt in installments payable to the **MICHIGAN**
16 **AUTOMOBILE INSURANCE PLACEMENT** facility.

17 Sec. 3320. (1) The facility, with respect to private passenger
18 nonfleet automobiles, shall provide for all of the following:

19 (a) The equitable distribution of applicants to designated
20 participating members in accordance with the plan of operation.

21 (b) Issuance of policies of automobile insurance to qualified
22 applicants as provided in the plan of operation.

23 (c) The appointment of a number of participating members
24 appointed by the facility to act on behalf of the facility for the
25 distribution of risks or for the servicing of insureds, as provided
26 in the plan of operation and consistent with this section. The
27 facility shall do all of the following:

1 (i) Appoint those members having the 5 highest participation
2 ratios, as defined in section 3303(e) (i) to act on behalf of the
3 facility.

4 (ii) Appoint other members to act on behalf of the facility who
5 volunteer to so act and who meet reasonable servicing standards
6 established in the plan of operation, up to a maximum of 5 in
7 addition to those appointed pursuant to subparagraph ~~(i)~~-(i).

8 (iii) Appoint additional members to act on behalf of the
9 facility as necessary to do all of the following:

10 (A) Assure convenient access to the facility for all citizens
11 of this state.

12 (B) Assure a reasonable quality of service for persons insured
13 through the facility.

14 (C) Assure a reasonable representation of the various
15 insurance marketing systems.

16 (D) Assure reasonable claims handling.

17 (E) Assure a reasonable range of choice of insurers for
18 persons insured through the facility.

19 (d) Standards and monitoring procedures to assure that
20 participating members acting on behalf of the facility do all of
21 the following:

22 (i) Provide service to persons insured through the facility
23 equivalent to the service provided to persons insured by the
24 insurer voluntarily.

25 (ii) Handle claims in an efficient and reasonable manner.

26 (iii) Provide internal review procedures for persons insured
27 through the facility identical to those established pursuant to

1 chapter 21 for persons insured voluntarily.

2 (e) ~~Establish~~ **THE ESTABLISHMENT OF** procedures and guidelines
3 for the issuance of binders by agents upon receipt of the
4 application for coverage.

5 (f) ~~Provide for the issuance~~ **ISSUANCE** of policies of
6 automobile insurance to qualified applicants whose licenses to
7 operate a vehicle have been suspended pursuant to section 310,
8 ~~310b,~~ 310d, 315, 321a, 324, 328, 512, 515, 625, 625b, 625f, 748,
9 801c, or 907 of ~~Act No. 300 of the Public Acts of 1949, as amended,~~
10 ~~being sections~~ **THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL** 257.310,
11 ~~257.310b,~~ 257.310d, 257.315, 257.321a, 257.324, 257.328, 257.512,
12 257.515, 257.625, 257.625b, 257.625f, 257.748, 257.801c, and
13 257.907, ~~of the Michigan Compiled Laws,~~ as provided in the plan of
14 operation. These policies may be canceled after a period of not
15 less than 30 days if the insured fails to produce proof that the
16 suspended license has been reinstated.

17 (G) **ADMINISTRATION OF THE ASSIGNED CLAIMS PLAN AS REQUIRED**
18 **UNDER CHAPTER 31.**

19 (2) Automobile insurance made available under this section
20 shall be equivalent to the automobile insurance normally available
21 in the voluntary competitive market in forms as approved by the
22 commissioner with such changes, additions, and amendments as are
23 adopted by the board of governors and approved by the commissioner.

24 Sec. 3330. (1) The board of governors shall have all power to
25 direct the operation of the facility, including, at a minimum, all
26 of the following:

27 (a) To sue and be sued in the name of the facility. A judgment

1 against the facility shall not create any liabilities in the
2 individual participating members of the facility.

3 (b) To delegate ministerial duties, to hire a manager, to hire
4 legal counsel, and to contract for goods and services from others.

5 (c) To assess participating members on the basis of
6 participation ratios pursuant to section 3303 to cover anticipated
7 costs of operation and administration of the facility, to provide
8 for equitable servicing fees, and to share losses, profits, and
9 expenses pursuant to the plan of operation.

10 (d) To impose limitations on cancellation or nonrenewal by
11 participating members of facility-placed business, in addition to
12 the limitations imposed by chapters 21 and 32.

13 (e) To provide for a limited number of participating members
14 to receive equitable distribution of applicants; or to provide for
15 a limited number of participating members to service applicants in
16 a plan of sharing of losses in accordance with ~~the subsection~~
17 **SECTION** 3320(1)(c) and the plan operation.

18 (f) To provide for standards of performance of service for the
19 participating members designated pursuant to subdivision (e).

20 (g) To adopt a plan of operation and any amendments to the
21 plan, not inconsistent with this chapter, necessary to assure the
22 fair, reasonable, equitable, and nondiscriminatory manner of
23 administering the facility, including compliance with chapter 21,
24 and to provide for such other matters as are necessary or advisable
25 to implement this chapter, including matters necessary to comply
26 with the requirements of chapter 21.

27 **(H) TO ASSESS SELF-INSURERS AND INSURERS CONSISTENT WITH**

1 **CHAPTER 31 AND THE ASSIGNED CLAIMS PLAN ADOPTED UNDER SECTION 3171.**

2 (2) The board of governors shall institute or cause to be
3 instituted by the facility or on its behalf an automatic data
4 processing system for recording and compiling data relative to
5 individuals insured through the facility. An automatic data
6 processing system established under this subsection shall, to the
7 greatest extent possible, be made compatible with the automatic
8 data processing system maintained by the secretary of state, to
9 provide for the identification and review of individuals insured
10 through the facility.

11 **(3) THE SECRETARY OF STATE SHALL PROVIDE TO THE BOARD OF**
12 **GOVERNORS INFORMATION NECESSARY FOR THE BOARD OF GOVERNORS TO**
13 **ASSESS SELF-INSURERS PURSUANT TO SUBSECTION (1) (H) .**

14 Enacting section 1. Sections 3172, 3173a, 3174, and 3175 of
15 the insurance code of 1956, 1956 PA 218, MCL 500.3172, 500.3173a,
16 500.3174, and 500.3175, as amended by this amendatory act, take
17 effect on the date the assigned claims plan is filed with the
18 secretary of state under section 3171(3) of the insurance code of
19 1956, 1956 PA 218, MCL 500.3171.