

HOUSE BILL No. 6095

December 18, 2014, Introduced by Rep. Cavanagh and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3104 (MCL 500.3104), as amended by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3104. (1) ~~An~~ **THE CATASTROPHIC CLAIMS ASSOCIATION IS**
2 **CREATED AS AN** unincorporated, nonprofit association. ~~to be known as~~
3 ~~the catastrophic claims association, hereinafter referred to as the~~
4 ~~association, is created.~~ Each insurer engaged in writing insurance
5 coverages that provide the security required by section 3101(1)
6 within this state, as a condition of its authority to transact
7 insurance in this state, shall be a member of the association and
8 ~~shall be~~ **IS** bound by the plan of operation of the association. Each
9 insurer engaged in writing insurance coverages that provide the
10 security required by section 3103(1) within this state, as a
11 condition of its authority to transact insurance in this state,

1 shall be considered a member of the association, but only for
2 purposes of premiums under subsection (7)(d). Except as expressly
3 provided in this section, the association is not subject to any
4 laws of this state with respect to insurers, but in all other
5 respects the association is subject to the laws of this state to
6 the extent that the association would be if it were an insurer
7 organized and subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (5) An unsatisfied net liability to the association of an
23 insolvent member shall be assumed by and apportioned among the
24 remaining members of the association as provided in the plan of
25 operation. The association has all rights allowed by law on behalf
26 of the remaining members against the estate or funds of the
27 insolvent member for ~~sums~~ **MONEY** due the association.

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

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

8 (a) Assume 100% of all liability as provided in subsection
9 (2).

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

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

24 (d) In a manner provided for in the plan of operation,
25 calculate ~~and charge to members of the association~~ a total premium
26 **AMOUNT** sufficient to cover the expected losses and expenses of the
27 association that the association will likely incur during the

1 ~~CALCULATION~~ period. ~~for which the premium is applicable. The~~
 2 ~~premium~~ **CALCULATED AMOUNT** shall include an amount to cover incurred
 3 but not reported losses for the period and may be adjusted ~~for any~~
 4 **IF PREMIUMS PAID FOR OR ANY AMOUNT CALCULATED FOR A PREVIOUS PERIOD**
 5 **RESULTED IN AN** excess or deficient ~~premiums from previous periods.~~
 6 **DEFICIENCY.** Excesses or deficiencies from previous periods may be
 7 fully adjusted in a single period or may be adjusted over several
 8 periods in a manner provided for in the plan of operation. ~~Each~~
 9 ~~member shall be charged an~~ **THE ASSOCIATION SHALL THEN DIVIDE THE**
 10 **TOTAL** amount ~~equal to that member's~~ **BY THE** total written car years
 11 of insurance providing the security required by ~~section~~ **SECTIONS**
 12 3101(1) ~~or~~ **AND** 3103(1) ~~, or both,~~ written in this state during the
 13 **CALCULATED** period to which the ~~premium~~ **TOTAL AMOUNT** applies,
 14 ~~multiplied by~~ **TO DETERMINE** the **STATE** average premium per car. The
 15 average ~~premium per car shall be the total premium calculated~~
 16 ~~divided by the total written car years of insurance providing the~~
 17 ~~security required by section 3101(1) or 3103(1) written in this~~
 18 ~~state of all members during the period to which the premium~~
 19 ~~applies. A member shall be charged a~~ **THE ASSOCIATION SHALL ALSO**
 20 **CALCULATE A STATE AVERAGE** premium for a ~~historic vehicle that is~~
 21 ~~insured with the member of~~ **VEHICLES THAT IS** 20% of the **STATE**
 22 **AVERAGE** premium charged for a ~~car insured with the member.~~ **CARS.** As
 23 used in this subdivision:
 24 (i) "Car" includes a motorcycle but does not include a historic
 25 vehicle.
 26 (ii) "Historic vehicle" means a vehicle that is a registered
 27 historic vehicle under section 803a or 803p of the Michigan vehicle

code, 1949 PA 300, MCL 257.803a and 257.803p.

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

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

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

(E) ANNUALLY, ADVISE THE SECRETARY OF STATE OF THE STATE AVERAGE PREMIUM AND STATE AVERAGE PREMIUM FOR HISTORIC VEHICLES CALCULATED UNDER SUBDIVISION (D) AND ACCEPT PAYMENT OF THE PREMIUMS COLLECTED BY THE SECRETARY OF STATE.

(f) Receive and distribute all ~~sums~~ **MONEY** required by the operation of the association.

(g) Establish procedures for reviewing claims procedures and practices of members of the association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the association, the association may undertake or may contract with another person, including another member, to adjust or assist in the adjustment of claims for the member on claims that create a potential liability to the association and may charge the cost of the adjustment to the member.

(8) In addition to other powers granted to it by this section, the association may do all of the following:

(a) Sue and be sued in the name of the association. A judgment against the association shall not create any direct liability

1 against the individual members of the association. The association
2 may provide for the indemnification of its members, members of the
3 board of directors of the association, and officers, employees, and
4 other persons lawfully acting on behalf of the association.

5 (b) Reinsure all or any portion of its potential liability
6 with reinsurers licensed to transact insurance in this state or
7 approved by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT**.

8 (c) Provide for appropriate housing, equipment, and personnel
9 as may be necessary to assure the efficient operation of the
10 association.

11 (d) Pursuant to the plan of operation, adopt reasonable rules
12 for the administration of the association, enforce those rules, and
13 delegate authority, as the board considers necessary to assure the
14 proper administration and operation of the association consistent
15 with the plan of operation.

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

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

22 (g) Perform other acts not specifically enumerated in this
23 section that are necessary or proper to accomplish the purposes of
24 the association and that are not inconsistent with this section or
25 the plan of operation.

26 (9) A board of directors is created ~~, hereinafter referred to~~
27 ~~as the board, which shall be responsible for the operation of~~ **AND**

1 **SHALL OPERATE** the association consistent with the plan of operation
2 and this section.

3 (10) The plan of operation shall provide for all of the
4 following:

5 (a) The establishment of necessary facilities.

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

7 (c) Procedures ~~to be utilized in charging premiums, including~~
8 ~~adjustments from excess or deficient premiums from prior~~
9 ~~periods.~~ **FOR MAKING THE CALCULATIONS UNDER SUBSECTION (7) (D) .**

10 (d) Procedures ~~governing the actual payment of~~ **FOR RECEIVING**
11 ~~premiums to the association.~~ **FROM THE SECRETARY OF STATE.**

12 (e) Reimbursement of each member of the board by the
13 association for actual and necessary expenses incurred on
14 association business.

15 (f) The investment policy of the association.

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

18 (11) ~~Each~~ **THE** board shall include members that ~~would~~
19 ~~contribute~~ **INSURE A NUMBER OF VEHICLES FOR WHICH** a total of not
20 less than 40% of the total premium calculated pursuant to
21 subsection (7) (d) **WOULD BE PAID.** Each director ~~shall be~~ **IS** entitled
22 to 1 vote. The initial term of office of a director ~~shall be~~ **IS** 2
23 years.

24 (12) As part of the plan of operation, the board shall adopt
25 rules providing for the composition and term of successor boards to
26 the initial board, consistent with the membership composition
27 requirements in subsections (11) and (13). Terms of the directors

1 shall be staggered so that the terms of all the directors do not
 2 expire at the same time and so that a director does not serve a
 3 term of more than 4 years.

4 (13) The board shall consist of 5 directors, and the
 5 ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** shall be an ex officio
 6 member of the board without vote.

7 (14) Each director shall be appointed by the ~~commissioner~~
 8 **DIRECTOR OF THE DEPARTMENT** and shall serve until that member's
 9 successor is selected and qualified. The chairperson of the board
 10 shall be elected by the board. A vacancy on the board shall be
 11 filled by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** consistent
 12 with the plan of operation.

13 (15) ~~After the board is appointed, the~~**THE** board shall meet as
 14 often as the chairperson, the ~~commissioner,~~**DIRECTOR OF THE**
 15 **DEPARTMENT**, or the plan of operation ~~shall require,~~**REQUIRES**, or at
 16 the request of any 3 members of the board. The chairperson ~~shall~~
 17 ~~retain the right to~~**MAY** vote on all issues. Four members of the
 18 board constitute a quorum.

19 (16) An annual report of the operations of the association in
 20 a form and detail as ~~may be~~ determined by the board shall be
 21 furnished to each member.

22 ~~—— (17) Not more than 60 days after the initial organizational~~
 23 ~~meeting of the board, the board shall submit to the commissioner~~
 24 ~~for approval a proposed plan of operation consistent with the~~
 25 ~~objectives and provisions of this section, which shall provide for~~
 26 ~~the economical, fair, and nondiscriminatory administration of the~~
 27 ~~association and for the prompt and efficient provision of~~

1 indemnity. If a plan is not submitted within this 60 day period,
 2 then the commissioner, after consultation with the board, shall
 3 formulate and place into effect a plan consistent with this
 4 section.

5 ~~—— (18) The plan of operation, unless approved sooner in writing,~~
 6 ~~shall be considered to meet the requirements of this section if it~~
 7 ~~is not disapproved by written order of the commissioner within 30~~
 8 ~~days after the date of its submission. Before disapproval of all or~~
 9 ~~any part of the proposed plan of operation, the commissioner shall~~
 10 ~~notify the board in what respect the plan of operation fails to~~
 11 ~~meet the requirements and objectives of this section. If the board~~
 12 ~~fails to submit a revised plan of operation that meets the~~
 13 ~~requirements and objectives of this section within the 30 day~~
 14 ~~period, the commissioner shall enter an order accordingly and shall~~
 15 ~~immediately formulate and place into effect a plan consistent with~~
 16 ~~the requirements and objectives of this section.~~

17 (17) ~~(19) The proposed plan of operation or ANY~~ amendments to
 18 the plan of operation **OF THE ASSOCIATION** are subject to majority
 19 approval by the board, ~~ratified~~ **AND RATIFICATION** by a majority of
 20 the membership having a vote, with voting rights being apportioned
 21 according to the premiums charged in subsection (7)(d) and are
 22 subject to approval by the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT.**

23 (18) ~~(20) Upon approval by the commissioner and ratification~~
 24 ~~by the members of the plan submitted, or upon the promulgation of a~~
 25 ~~plan by the commissioner, each AN~~ insurer authorized to write
 26 insurance providing the security required by section 3101(1) in
 27 this state, as provided in this section, is bound by and shall

1 formally subscribe to and participate in the plan ~~approved~~ **OF**
2 **OPERATION** as a condition of maintaining its authority to transact
3 insurance in this state.

4 (19) ~~(21)~~ The association is subject to all the reporting,
5 loss reserve, and investment requirements of the ~~commissioner~~
6 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
7 **THE MEMBERS** of the association.

8 (20) ~~(22)~~ Premiums charged members ~~by the association shall be~~
9 ~~recognized in the rate making procedures for insurance rates in the~~
10 ~~same manner that expenses and premium taxes are recognized.~~ **AND DUE**
11 **ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT REMOVED THE**
12 **REQUIREMENT THAT MEMBERS PAY PREMIUMS TO THE ASSOCIATION SHALL BE**
13 **PAID IMMEDIATELY.**

14 (21) ~~(23)~~ The ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT** or an
15 authorized representative of the ~~commissioner~~ **DIRECTOR OF THE**
16 **DEPARTMENT** may visit the association at any time and examine any
17 and all **OF** the association's affairs.

18 (22) ~~(24)~~ The association does not have liability for losses
19 occurring before July 1, 1978.

20 (23) ~~(25)~~ As used in this section:

21 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION
22 CREATED IN SUBSECTION (1).

23 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION
24 CREATED IN SUBSECTION (9).

25 (C) ~~(a)~~ "Consumer price index" means the percentage of change
26 in the consumer price index for all urban consumers in the United
27 States city average for all items for the 24 months prior to

1 October 1 of the year ~~prior to~~ **BEFORE** the July 1 effective date of
2 the biennial adjustment under subsection (2)(k) as reported by the
3 United States department of labor, bureau of labor statistics, and
4 as certified by the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT**.

5 (D) ~~(b)~~ "Motor vehicle accident policy" means a policy
6 providing the coverages required under section 3101(1).

7 (E) ~~(e)~~ "Ultimate loss" means the actual loss amounts that a
8 member is obligated to pay and that are paid or payable by the
9 member, and do not include claim expenses. An ultimate loss is
10 incurred by the association on the date that the loss occurs.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No. ____ or House Bill No. ____ (request no.
13 02589'13 a) of the 97th Legislature is enacted into law.