

# SENATE BILL No. 251

March 7, 2013, Introduced by Senators SMITH and HUNE and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 3104, 3107, and 3163 (MCL 500.3104, 500.3107,  
and 500.3163), section 3104 as amended by 2002 PA 662, section 3107  
as amended by 2012 PA 542, and section 3163 as amended by 2002 PA  
697.

## 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 **UNTIL**

1 **THE ASSOCIATION IS DISSOLVED UNDER SUBSECTION (23).** Each insurer  
2 engaged in writing insurance coverages that provide the security  
3 required by section 3103(1) within this state, as a condition of  
4 its authority to transact insurance in this state, shall be  
5 considered a member of the association **UNTIL THE ASSOCIATION IS**  
6 **DISSOLVED UNDER SUBSECTION (23),** but only for purposes of premiums  
7 under subsection (7)(d). Except as expressly provided in this  
8 section, the association is not subject to any laws of this state  
9 with respect to insurers, but in all other respects the association  
10 is subject to the laws of this state to the extent that the  
11 association would be if it were an insurer organized and subsisting  
12 under chapter 50.

13 (2) ~~The~~ **FOR LOSS OCCURRENCES FOR WHICH THE ASSOCIATION HAS**  
14 **LIABILITY UNDER SUBSECTION (22),** THE association shall provide and  
15 each member shall accept indemnification for 100% of the amount of  
16 ultimate loss sustained under personal protection insurance  
17 coverages in excess of the following amounts in each loss  
18 occurrence:

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

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

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

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

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

1 during the period July 1, 2005 to June 30, 2006, \$375,000.00.

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

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

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

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

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

12 (k) For a motor vehicle accident policy issued or renewed  
13 during the period July 1, 2011 to ~~June 30, 2013,~~ **THE DATE ON WHICH**  
14 **THE ASSOCIATION HAS PAID ITS FINAL LIABILITY AS DESCRIBED IN**  
15 **SUBSECTION (23),** \$500,000.00. ~~Beginning July 1, 2013, this~~  
16 ~~\$500,000.00 amount shall be increased biennially on July 1 of each~~  
17 ~~odd-numbered year, for policies issued or renewed before July 1 of~~  
18 ~~the following odd-numbered year, by the lesser of 6% or the~~  
19 ~~consumer price index, and rounded to the nearest \$5,000.00. This~~  
20 ~~biennial adjustment shall be calculated by the association by~~  
21 ~~January 1 of the year of its July 1 effective date.~~

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

25 (4) An insurer whose membership in the association has been  
26 terminated by withdrawal shall continue to be bound by the plan of  
27 operation, and upon withdrawal, all unpaid premiums that have been

1 charged to the withdrawing member are payable as of the effective  
2 date of the withdrawal.

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

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

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

16 (a) Assume ~~100% of all~~ liability as provided in subsection  
17 (2).

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

27 (c) Maintain relevant loss and expense data relative to all

1 liabilities of the association and require each member to furnish  
2 statistics, in connection with liabilities of the association, at  
3 the times and in the form and detail as may be required by the plan  
4 of operation.

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

27 (i) "Car" includes a motorcycle but does not include a historic

1 vehicle.

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

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

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

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

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

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

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

25 (a) Sue and be sued in the name of the association. A judgment  
26 against the association shall not create any direct liability  
27 against the individual members of the association. The association

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

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

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

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

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

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

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

25 (9) A board of directors is created ~~, hereinafter referred to~~  
26 ~~as the board, which shall be responsible for the operation of~~ **AND**  
27 **SHALL OPERATE** the association consistent with the plan of operation

1 and this section.

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

4 (a) The establishment of necessary facilities.

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

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

8 (d) Procedures governing the actual payment of premiums to the  
9 association.

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

13 (f) The investment policy of the association.

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

16 (11) Each board shall include members that would contribute a  
17 total of not less than 40% of the total premium calculated pursuant  
18 to subsection (7) (d). Each director ~~shall be~~ **IS** entitled to 1 vote.  
19 The initial term of office of a director ~~shall be~~ **IS** 2 years.

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

27 (13) The board shall consist of 5 directors, and the



1 commissioner shall be an ex officio member of the board without  
2 vote.

3 (14) Each director shall be appointed by the commissioner and  
4 shall serve until that member's successor is selected and  
5 qualified. The chairperson of the board shall be elected by the  
6 board. A vacancy on the board shall be filled by the commissioner  
7 consistent with the plan of operation.

8 (15) ~~After the board is appointed, the~~ **THE** board shall meet as  
9 often as the chairperson, the commissioner, or the plan of  
10 operation ~~shall require,~~ **REQUIRES,** or at the request of any 3  
11 members of the board. The chairperson ~~shall retain the right to~~ **MAY**  
12 vote on all issues. Four members of the board constitute a quorum.

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

16 ~~—— (17) Not more than 60 days after the initial organizational~~  
17 ~~meeting of the board, the board shall submit to the commissioner~~  
18 ~~for approval a proposed plan of operation consistent with the~~  
19 ~~objectives and provisions of this section, which shall provide for~~  
20 ~~the economical, fair, and nondiscriminatory administration of the~~  
21 ~~association and for the prompt and efficient provision of~~  
22 ~~indemnity. If a plan is not submitted within this 60 day period,~~  
23 ~~then the commissioner, after consultation with the board, shall~~  
24 ~~formulate and place into effect a plan consistent with this~~  
25 ~~section.~~

26 ~~—— (18) The plan of operation, unless approved sooner in writing,~~  
27 ~~shall be considered to meet the requirements of this section if it~~

~~is not disapproved by written order of the commissioner within 30 days after the date of its submission. Before disapproval of all or any part of the proposed plan of operation, the commissioner shall notify the board in what respect the plan of operation fails to meet the requirements and objectives of this section. If the board fails to submit a revised plan of operation that meets the requirements and objectives of this section within the 30 day period, the commissioner shall enter an order accordingly and shall immediately formulate and place into effect a plan consistent with the requirements and objectives of this section.~~

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

(18) ~~(20)~~ Upon approval by the commissioner and ratification by the members of the plan submitted, or upon the promulgation of a plan by the commissioner, each **AN** insurer authorized to write insurance providing the security required by section 3101(1) in this state, as provided in this section, is bound by and shall formally subscribe to and participate in the plan ~~approved~~ **OF OPERATION** as a condition of maintaining its authority to transact insurance in this state.

(19) ~~(21)~~ The association is subject to all the reporting, loss reserve, and investment requirements of the commissioner to the same extent as ~~would a member~~ **ARE THE MEMBERS** of the

1 association.

2 (20) ~~(22)~~ Premiums charged members by the association shall be  
3 recognized in the rate-making procedures for insurance rates in the  
4 same manner that expenses and premium taxes are recognized.

5 (21) ~~(23)~~ The commissioner or an authorized representative of  
6 the commissioner may visit the association at any time and examine  
7 any and all **OF** the association's affairs.

8 (22) ~~(24)~~ The association does not have liability for losses  
9 occurring before July 1, 1978 **OR FOR LOSSES UNDER MOTOR VEHICLE**  
10 **ACCIDENT POLICIES ISSUED OR RENEWED AFTER DECEMBER 31, 2013.**

11 (23) **THE ASSOCIATION SHALL CONTINUE IN EXISTENCE UNTIL ALL**  
12 **LIABILITIES DUE TO LOSS OCCURRENCES FOR WHICH IT HAS LIABILITY**  
13 **UNDER SUBSECTION (22) ARE PAID. ON PAYMENT OF THE FINAL LIABILITY,**  
14 **THE BOARD SHALL NOTIFY THE COMMISSIONER, WIND UP THE AFFAIRS OF THE**  
15 **ASSOCIATION, TRANSMIT ANY REMAINING MONEY HELD BY THE ASSOCIATION**  
16 **TO ITS MEMBERS IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION,**  
17 **AND DISSOLVE THE ASSOCIATION.**

18 (24) ~~(25)~~ As used in this section:

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

26 (A) **"ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION**  
27 **CREATED IN SUBSECTION (1) .**

1           **(B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION**  
 2           **CREATED IN SUBSECTION (9) .**

3           **(C) ~~(b)~~**"Motor vehicle accident policy" means a policy  
 4 providing the coverages required under section 3101(1) .

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

9           Sec. 3107. (1) Except as **OTHERWISE** provided in ~~subsection (2),~~  
 10 **THIS SECTION**, personal protection insurance benefits are payable  
 11 for the following:

12           **(a) ~~Allowable~~FOR LOSS OCCURRENCES UNDER MOTOR VEHICLE**  
 13 **ACCIDENT POLICIES ISSUED OR RENEWED BEFORE JANUARY 1, 2014,**  
 14 **ALLOWABLE** expenses consisting of all reasonable charges incurred  
 15 for reasonably necessary products, services and accommodations for  
 16 an injured person's care, recovery, or rehabilitation. **FOR LOSS**  
 17 **OCCURRENCES UNDER MOTOR VEHICLE ACCIDENT POLICIES ISSUED OR RENEWED**  
 18 **AFTER DECEMBER 31, 2013, PERSONAL PROTECTION BENEFITS ARE PAYABLE**  
 19 **FOR ALLOWABLE EXPENSES CONSISTING OF ALL REASONABLE CHARGES**  
 20 **INCURRED UP TO A MAXIMUM OF \$50,000.00 FOR REASONABLY NECESSARY**  
 21 **PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR AN INJURED PERSON'S**  
 22 **CARE, RECOVERY, OR REHABILITATION.** Allowable expenses within  
 23 personal protection insurance coverage ~~shall~~**DO** not include either  
 24 of the following:

25           **(i)** Charges for a hospital room in excess of a reasonable and  
 26 customary charge for semiprivate accommodations ~~except if~~**UNLESS**  
 27 the injured person requires special or intensive care.

1           (ii) Funeral and burial expenses in excess of the amount set  
2     forth in the policy, which shall not be less than \$1,750.00 or more  
3     than \$5,000.00.

4           (b) Work loss consisting of loss of income from work an  
5     injured person would have performed during the first 3 years after  
6     the date of the accident if he or she had not been injured. Work  
7     loss does not include any loss after the date on which the injured  
8     person dies. Because the benefits received from personal protection  
9     insurance for loss of income are not taxable income, the benefits  
10    payable for such loss of income shall be reduced 15% unless the  
11    claimant presents to the insurer in support of his or her claim  
12    reasonable proof of a lower value of the income tax advantage in  
13    his or her case, in which case the lower value shall apply. For the  
14    period beginning October 1, 2012 through September 30, 2013, the  
15    benefits payable for work loss sustained in a single 30-day period  
16    and the income earned by an injured person for work during the same  
17    period together shall not exceed \$5,189.00, which maximum shall  
18    apply pro rata to any lesser period of work loss. Beginning October  
19    1, 2013, the maximum shall be adjusted annually to reflect changes  
20    in the cost of living under rules prescribed by the commissioner  
21    but any change in the maximum shall apply only to benefits arising  
22    out of accidents occurring subsequent to the date of change in the  
23    maximum.

24           (c) Expenses not exceeding \$20.00 per day, reasonably incurred  
25    in obtaining ordinary and necessary services in lieu of those that,  
26    if he or she had not been injured, an injured person would have  
27    performed during the first 3 years after the date of the accident,

1 not for income but for the benefit of himself or herself or of his  
2 or her dependent.

3 (2) Both of the following apply to personal protection  
4 insurance benefits payable under subsection (1):

5 (a) A person who is 60 years of age or older and in the event  
6 of an accidental bodily injury would not be eligible to receive  
7 work loss benefits under subsection (1)(b) may waive coverage for  
8 work loss benefits by signing a waiver on a form provided by the  
9 insurer. An insurer shall offer a reduced premium rate to a person  
10 who waives coverage under this subsection for work loss benefits.  
11 Waiver of coverage for work loss benefits applies only to work loss  
12 benefits payable to the person or persons who have signed the  
13 waiver form.

14 (b) An insurer shall not be required to provide coverage for  
15 the medical use of marihuana or for expenses related to the medical  
16 use of marihuana.

17 Sec. 3163. (1) An insurer authorized to transact automobile  
18 liability insurance and personal and property protection insurance  
19 in this state shall file and maintain a written certification that  
20 any accidental bodily injury or property damage occurring in this  
21 state arising from the ownership, operation, maintenance, or use of  
22 a motor vehicle as a motor vehicle by an out-of-state resident who  
23 is insured under its automobile liability insurance policies, is  
24 subject to the personal and property protection insurance system  
25 under this act.

26 (2) A nonadmitted insurer may voluntarily file the  
27 certification described in subsection (1).

1           (3) Except as otherwise provided in subsection (4), if a  
2     certification filed under subsection (1) or (2) applies to  
3     accidental bodily injury or property damage, the insurer and its  
4     insureds with respect to that injury or damage have the rights and  
5     immunities under this act for personal and property protection  
6     insureds, and claimants have the rights and benefits of personal  
7     and property protection insurance claimants, including the right to  
8     receive benefits from the electing insurer as if it were an insurer  
9     of personal and property protection insurance applicable to the  
10    accidental bodily injury or property damage.

11          (4) If an insurer of an out-of-state resident is required to  
12    provide benefits under subsections (1) to (3) to that out-of-state  
13    resident for accidental bodily injury for an accident in which the  
14    out-of-state resident was not an occupant of a motor vehicle  
15    registered in this state, the insurer is only liable for the amount  
16    of ultimate loss sustained up to ~~\$500,000.00.~~ **\$50,000.00.** Benefits  
17    under this subsection are not recoverable to the extent that  
18    benefits covering the same loss are available from other sources,  
19    regardless of the nature or number of benefit sources available and  
20    regardless of the nature or form of the benefits.