

SENATE BILL No. 709

December 4, 2013, Introduced by Senator KAHN and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3020 and 3104 (MCL 500.3020 and 500.3104),
section 3020 as amended by 2006 PA 106 and section 3104 as amended
by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3020. (1) ~~A-EXCEPT FOR A~~ policy of ~~casualty insurance,~~
2 ~~except worker's compensation and-OR~~ mortgage guaranty insurance, ~~AN~~
3 **AUTHORIZED INSURER SHALL NOT ISSUE OR DELIVER IN THIS STATE A**
4 **POLICY OF CASUALTY INSURANCE,** including all classes of motor
5 vehicle coverage, ~~shall not be issued or delivered in this state by~~
6 ~~an insurer authorized to do business in this state for which a~~
7 premium or advance assessment is charged, unless the policy
8 contains the following provisions:

1 (a) That the policy may be canceled at any time at the request
2 of the insured, in which case the insurer ~~shall~~**WILL** refund the
3 excess of paid premium or assessment above the pro rata rates for
4 the expired time, except as otherwise provided in subsections (2),
5 (3), ~~and~~(4), **AND (8)**.

6 (b) Except as otherwise provided in subdivision (d), that the
7 policy may be canceled at any time by the insurer by mailing to the
8 insured at the insured's address last known to the insurer or an
9 authorized agent of the insurer, with postage fully prepaid, a not
10 less than 10 days' written notice of cancellation with or without
11 tender of the excess of paid premium or assessment above the pro
12 rata premium for the expired time.

13 (c) That the minimum earned premium on any policy canceled
14 ~~pursuant to~~**UNDER** this subsection, other than automobile insurance
15 as defined in section 2102(2)(a) and (b), ~~shall~~**WILL** not be less
16 than the pro rata premium for the expired time or \$25.00, whichever
17 is greater.

18 (d) ~~That an~~**IF THE POLICY IS A MALPRACTICE INSURANCE POLICY,**
19 **THAT THE** insurer may refuse to renew ~~a malpractice insurance~~**THE**
20 policy only by mailing to the insured at the insured's address last
21 known to the insurer or an authorized agent of the insurer, with
22 postage fully prepaid, a not less than 60 days' written notice of
23 refusal to renew. As used in this subdivision, "malpractice
24 insurance" means malpractice insurance as described in section
25 624(1)(h).

26 (2) An insurer may file a rule with the ~~commissioner~~**DIRECTOR**
27 providing for a minimum retention of premium for automobile

1 insurance as defined in section 2102(2)(a) and (b). The rule ~~shall~~
2 **MUST** describe the circumstances under which the retention is
3 applied and ~~shall~~ set forth the amount to be retained. ~~which~~ **AN**
4 **AMOUNT TO BE RETAINED UNDER THIS SUBSECTION** is subject to the
5 approval of the ~~commissioner~~ **DIRECTOR**. The rule ~~shall~~ **MUST**
6 include, but need not be limited to, the following provisions:

7 (a) That a minimum retention ~~shall~~ **WILL** be applied only ~~when~~
8 **IF** the amount exceeds the amount that would have been retained had
9 the policy been canceled on a pro rata basis.

10 (b) That a minimum retention does not apply to renewal
11 policies.

12 (c) That a minimum retention does not apply ~~when~~ **IF** a policy
13 is canceled for the following reasons:

14 (i) The insured is no longer required to maintain security
15 ~~pursuant to~~ **UNDER** section 3101(1).

16 (ii) The insured has replaced the automobile insurance policy
17 being canceled with an automobile insurance policy from another
18 insurer and provides proof of the replacement coverage to the
19 canceling insurer.

20 (3) Notwithstanding subsection (1), an insurer may issue a
21 noncancelable, nonrefundable, 6-month prepaid automobile insurance
22 policy in order for an insured to meet the registration
23 requirements of section 227a of the Michigan vehicle code, 1949 PA
24 300, MCL 257.227a.

25 (4) An insurer may provide for a short rate premium for
26 insurance on a motorcycle, watercraft, off-road vehicle, or
27 snowmobile. As used in this subsection:

1 (a) "Motorcycle" means that term as defined in section 3101.

2 (b) "Off-road vehicle" means an ORV as defined in section
3 81101 of the natural resources and environmental protection act,
4 1994 PA 451, MCL 324.81101.

5 (c) "Snowmobile" means that term as defined in section 82101
6 of the natural resources and environmental protection act, 1994 PA
7 451, MCL 324.82101.

8 (d) "Watercraft" means that term as defined in section 80301
9 of the natural resources and environmental protection act, 1994 PA
10 451, MCL 324.80301.

11 (5) Cancellation as prescribed in this section is without
12 prejudice to any claim originating before the cancellation. The
13 mailing of notice is prima facie proof of notice. Delivery of
14 written notice is equivalent to mailing.

15 (6) A notice of cancellation, including a cancellation notice
16 under section 3224, ~~shall~~**MUST** be accompanied by a statement that
17 the insured ~~shall~~**MAY** not operate or permit the operation of the
18 vehicle to which notice of cancellation is applicable, or operate
19 any other vehicle, unless the vehicle is insured as required by
20 law.

21 (7) An insurer who wishes to provide for a short rate premium
22 under subsection (4) shall file with the ~~commissioner pursuant to~~
23 **DIRECTOR UNDER** chapter 24 or 26 a rule establishing a short rate
24 premium. The rule ~~shall~~**MUST** describe the circumstances under which
25 the short rate is applied and ~~shall~~ set forth the amount or
26 percentage to be retained.

27 (8) **AN INSURER SHALL NOT REFUND THE PORTION OF A PAID PREMIUM**

1 THAT REFLECTS AN ASSESSMENT OF THE CATASTROPHIC CLAIMS ASSOCIATION
2 UNDER SECTION 3104 TO THE INSURED ON CANCELLATION OF THE POLICY TO
3 WHICH THE PREMIUM APPLIES.

4 Sec. 3104. (1) ~~An~~ **THE CATASTROPHIC CLAIMS ASSOCIATION IS**
5 **CREATED AS AN** unincorporated, nonprofit association. ~~to be known as~~
6 ~~the catastrophic claims association, hereinafter referred to as the~~
7 ~~association, is created.~~ Each insurer engaged in writing insurance
8 coverages that provide the security required by section 3101(1)
9 within this state, as a condition of its authority to transact
10 insurance in this state, shall be a member of the association and
11 ~~shall be~~ **IS** bound by the plan of operation of the association. Each
12 insurer engaged in writing insurance coverages that provide the
13 security required by section 3103(1) within this state, as a
14 condition of its authority to transact insurance in this state,
15 shall be considered a member of the association, but only for
16 purposes of premiums under subsection (7)(d). Except as expressly
17 provided in this section, the association is not subject to any
18 laws of this state with respect to insurers, but in all other
19 respects the association is subject to the laws of this state to
20 the extent that the association would be if it were an insurer
21 organized and subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

19 (k) For a motor vehicle accident policy issued or renewed
20 during the period July 1, 2011 to June 30, 2013, \$500,000.00.

21 Beginning July 1, 2013, this \$500,000.00 amount shall be increased
22 biennially on July 1 of each odd-numbered year, for policies issued
23 or renewed before July 1 of the following odd-numbered year, by the
24 lesser of 6% or the consumer price index, and rounded to the
25 nearest \$5,000.00. This biennial adjustment shall be calculated by
26 the association by January 1 of the year of its July 1 effective
27 date.

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

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

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

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

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

22 (a) Assume 100% of all liability as provided in subsection
23 (2).

24 (b) Establish procedures by which members shall promptly
25 report to the association each claim that, on the basis of the
26 injuries or damages sustained, may reasonably be anticipated to
27 involve the association if the member is ultimately held legally

1 liable for the injuries or damages. Solely for the purpose of
2 reporting claims, the member shall in all instances consider itself
3 legally liable for the injuries or damages. The member shall also
4 advise the association of subsequent developments likely to
5 materially affect the interest of the association in the claim.

6 (c) Maintain relevant loss and expense data relative to all
7 liabilities of the association and require each member to furnish
8 statistics, in connection with liabilities of the association, at
9 the times and in the form and detail as may be required by the plan
10 of operation.

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

1 section 3101(1) or 3103(1) written in this state of all members
2 during the period to which the premium applies. A member shall be
3 charged a premium for a historic vehicle that is insured with the
4 member of 20% of the premium charged for a car insured with the
5 member. As used in this subdivision:

6 (i) "Car" includes a motorcycle but does not include a historic
7 vehicle.

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

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

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

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

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

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

1 member.

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

4 (a) Sue and be sued in the name of the association. A judgment
5 against the association shall not create any direct liability
6 against the individual members of the association. The association
7 may provide for the indemnification of its members, members of the
8 board of directors of the association, and officers, employees, and
9 other persons lawfully acting on behalf of the association.

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

13 (c) Provide for appropriate housing, equipment, and personnel
14 as may be necessary to assure the efficient operation of the
15 association.

16 (d) Pursuant to the plan of operation, adopt reasonable rules
17 for the administration of the association, enforce those rules, and
18 delegate authority, as the board considers necessary to assure the
19 proper administration and operation of the association consistent
20 with the plan of operation.

21 (e) Contract for goods and services, including independent
22 claims management, actuarial, investment, and legal services, from
23 others within or without this state to assure the efficient
24 operation of the association.

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

27 (g) Perform other acts not specifically enumerated in this

1 section that are necessary or proper to accomplish the purposes of
2 the association and that are not inconsistent with this section or
3 the plan of operation.

4 (9) A board of directors is created ~~, hereinafter referred to~~
5 ~~as the board, which shall be responsible for the operation of~~ **AND**
6 **SHALL OPERATE** the association consistent with the plan of operation
7 and this section.

8 (10) The plan of operation shall provide for all of the
9 following:

10 (a) The establishment of necessary facilities.

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

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

14 (d) Procedures governing the actual payment of premiums to the
15 association.

16 (e) Reimbursement of each member of the board by the
17 association for actual and necessary expenses incurred on
18 association business.

19 (f) The investment policy of the association.

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

22 (11) Each board shall include members that would contribute a
23 total of not less than 40% of the total premium calculated pursuant
24 to subsection (7)(d). Each director shall be entitled to 1 vote.
25 The initial term of office of a director shall be 2 years.

26 (12) As part of the plan of operation, the board shall adopt
27 rules providing for the composition and term of successor boards to

1 the initial board, consistent with the membership composition
2 requirements in subsections (11) and (13). Terms of the directors
3 shall be staggered so that the terms of all the directors do not
4 expire at the same time and so that a director does not serve a
5 term of more than 4 years.

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

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

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

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

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

~~the economical, fair, and nondiscriminatory administration of the association and for the prompt and efficient provision of indemnity. If a plan is not submitted within this 60 day period, then the commissioner, after consultation with the board, shall formulate and place into effect a plan consistent with this section.~~

~~—— (18) The plan of operation, unless approved sooner in writing, 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~~ **AND 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. **DIRECTOR OF THE DEPARTMENT.**

~~(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

1 insurance providing the security required by section 3101(1) in
2 this state, as provided in this section, is bound by and shall
3 formally subscribe to and participate in the plan ~~approved-OF~~
4 **OPERATION** as a condition of maintaining its authority to transact
5 insurance in this state.

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

10 (20) ~~(22)-~~Premiums charged members by the association shall be
11 recognized in the rate-making procedures for insurance rates in the
12 same manner that expenses and premium taxes are recognized.

13 **HOWEVER, ALL OF THE FOLLOWING APPLY TO THE PORTION OF A PREMIUM**
14 **CHARGED TO AN INSURED THAT REFLECTS AN AMOUNT FOR A PREMIUM CHARGED**
15 **TO A MEMBER BY THE ASSOCIATION:**

16 (A) **THE INSURER SHALL INCLUDE THE ENTIRE PORTION IN THE FIRST**
17 **BILLING PROVIDED TO THE INSURED UNDER A NEW OR RENEWED POLICY.**

18 (B) **THE INSURER SHALL NOT ALLOW THE PORTION TO BE PAID IN**
19 **INSTALLMENTS OR FINANCED.**

20 (C) **AFTER PAYMENT, THE INSURER SHALL NOT REFUND THE PORTION ON**
21 **CANCELLATION OF THE POLICY.**

22 (D) **THE INSURER SHALL PAY THE PORTION TO THE ASSOCIATION.**

23 (21) ~~(23)-~~The ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** or an
24 authorized representative of the ~~commissioner~~**DIRECTOR OF THE**
25 **DEPARTMENT** may visit the association at any time and examine any
26 and all **OF** the association's affairs.

27 (22) ~~(24)-~~The association does not have liability for losses

1 occurring before July 1, 1978.

2 (23) ~~(25)~~ As used in this section:

3 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION
4 CREATED IN SUBSECTION(1) .

5 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION
6 CREATED IN SUBSECTION (9) .

7 (C) ~~(a)~~ "Consumer price index" means the percentage of change
8 in the consumer price index for all urban consumers in the United
9 States city average for all items for the 24 months prior to
10 October 1 of the year ~~prior to~~ **BEFORE** the July 1 effective date of
11 the biennial adjustment under subsection (2) (k) as reported by the
12 United States department of labor, bureau of labor statistics, and
13 as certified by the commissioner.

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

16 (E) ~~(c)~~ "Ultimate loss" means the actual loss amounts that a
17 member is obligated to pay and that are paid or payable by the
18 member, and do not include claim expenses. An ultimate loss is
19 incurred by the association on the date that the loss occurs.