

HOUSE BILL NO. 6004

April 12, 2022, Introduced by Reps. Cavanagh, Rabhi, Rogers, Hood, Stone, Bezotte, Sneller, Steckloff, Weiss, Tyrone Carter, Brabec, Thanedar, Cynthia Johnson, O'Neal, Koleszar, LaGrand, Neeley, Sowerby, Hope, Brixie, Aiyash, Pohutsky, Brenda Carter, Breen, Haadsma, Cherry, Lasinski, Morse, Puri, Green, Peterson and Jones 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 2019 PA 21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3104. (1) The catastrophic claims association is created
2 as an unincorporated, nonprofit association. Each insurer engaged
3 in writing insurance coverages that provide the security required
4 by section ~~3101(1)~~ **3101** in this state, as a condition of its
5 authority to transact insurance in this state, shall be a member of
6 the association and is bound by the plan of operation of the

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

11 (2) For all motor vehicle accident policies issued or renewed
12 before July 2, 2020 and for a motor vehicle accident policy issued
13 or renewed after July 1, 2020 to which section 3107c(1)(d) applies,
14 the association shall provide and each member shall accept
15 indemnification for 100% of the amount of ultimate loss sustained
16 under personal protection insurance coverages in excess of the
17 following amounts in each loss occurrence:

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

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

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

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

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

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

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

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

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

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

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

(l) For a motor vehicle accident policy issued or renewed during the period July 1, 2013 to June 30, 2015, \$530,000.00.

(m) For a motor vehicle accident policy issued or renewed during the period July 1, 2015 to June 30, 2017, \$545,000.00.

(n) For a motor vehicle accident policy issued or renewed during the period July 1, 2017 to June 30, 2019, \$555,000.00.

(o) For a motor vehicle accident policy issued or renewed during the period July 1, 2019 to June 30, 2021, \$580,000.00.

(p) For a motor vehicle accident policy issued or renewed during the period beginning July 1, 2021 to June 30, 2023, \$600,000.00. Beginning July 1, ~~2021, 2023~~, this ~~\$580,000.00~~ **\$600,000.00** amount must be increased biennially on July 1 of each odd-numbered year, for policies issued or renewed before July 1 of the following odd-numbered year, by the lesser of 6% or the Consumer Price Index, and rounded to the nearest \$5,000.00. The association shall calculate this biennial adjustment by January 1 of the year of its July 1 effective date.

(3) An insurer may withdraw from the association only on ceasing to write insurance that provides the security required by

1 section ~~3101(1)~~ **3101** in this state.

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

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

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

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

20 (a) Assume 100% of all liability as provided in subsection
21 (2).

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

1 the interest of the association in the claim.

2 (c) Maintain relevant loss and expense data relating to all
3 liabilities of the association and require each member to furnish
4 statistics, in connection with liabilities of the association, at
5 the times and in the form and detail as required by the plan of
6 operation.

7 (d) In a manner provided for in the plan of operation,
8 calculate and charge to members of the association a total premium
9 sufficient to cover the expected losses and expenses of the
10 association that the association will likely incur during the
11 period for which the premium is applicable. The total premium must
12 include an amount to cover incurred but not reported losses for the
13 period and must be adjusted for any excess or deficient premiums
14 from previous periods. Excesses or deficiencies from previous
15 periods must either be fully adjusted in a single period or be
16 adjusted over several periods in a manner provided for in the plan
17 of operation. Each member must be charged an amount equal to that
18 member's total written car years of insurance providing the
19 security required by section ~~3101(1)~~**3101** or 3103(1), or both,
20 written in this state during the period to which the premium
21 applies, with the total written car years of insurance multiplied
22 by the applicable average premium per car. The average premium per
23 car is the total premium, as adjusted for any excesses or
24 deficiencies, divided by the total written car years of insurance
25 providing the security required by section ~~3101(1)~~**3101** or 3103(1),
26 or both, written in this state of all members during the period to
27 which the premium applies, excluding cars insured under a policy
28 with a coverage limit under section 3107c(1)(a), (b), or (c), cars
29 as to which an election to not maintain personal protection

1 insurance benefits has been made under section 3107d, or as to
2 which an exclusion under section 3109a(2) applies, except for any
3 portion of total premium that is an adjustment for a deficiency in
4 a previous period. A member may not be charged a premium for a car
5 insured under a policy with a coverage limit under section
6 3107c(1)(a), (b), or (c), as to which an election to not maintain
7 personal protection insurance benefits has been made under section
8 3107d, or as to which an exclusion under section 3109a(2) applies,
9 other than for the portion of the total premium attributable to an
10 adjustment for a deficiency in a previous period. A member must be
11 charged a premium for a historic vehicle that is insured with the
12 member of 20% of the premium charged for a car insured with the
13 member.

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

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

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

21 (f) Receive and distribute all money required by the operation
22 of the association.

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

1 association and may charge the cost of the adjustment to the
2 member.

3 (h) Provide any records necessary or requested by the director
4 for the actuarial examination under subsection (21).

5 (i) Subject to subsection (23), obey an order of the director
6 for a refund under subsection (22).

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

9 (a) Sue and be sued in the name of the association. A judgment
10 against the association does not create any direct liability
11 against the individual members of the association. The association
12 may provide for the indemnification of its members, members of the
13 board of directors of the association, and officers, employees, and
14 other persons lawfully acting on behalf of the association.

15 (b) Reinsure all or any portion of its potential liability
16 with reinsurers licensed to transact insurance in this state or
17 approved by the director.

18 (c) Provide for appropriate housing, equipment, and personnel
19 as necessary to assure the efficient operation of the association.

20 (d) Pursuant to the plan of operation, adopt reasonable rules
21 for the administration of the association, enforce those rules, and
22 delegate authority, as the board considers necessary to assure the
23 proper administration and operation of the association consistent
24 with the plan of operation.

25 (e) Contract for goods and services, including independent
26 claims management, actuarial, investment, and legal services, from
27 others in or outside of this state to assure the efficient
28 operation of the association.

29 (f) Hear and determine complaints of a company or other

1 interested party concerning the operation of the association.

2 (g) Perform other acts not specifically enumerated in this
3 section that are necessary or proper to accomplish the purposes of
4 the association and that are not inconsistent with this section or
5 the plan of operation.

6 (9) A board of directors is created and shall operate the
7 association consistent with the plan of operation and this section.

8 (10) The plan of operation must 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 The plan must require that any deficiency from a prior period be
15 amortized over not fewer than 15 years.

16 (d) Procedures for a refund to members of the association, for
17 distribution to insureds as provided in subsection (24), as ordered
18 by the director under subsection (22). The procedures must provide
19 for a distribution of a refund attributable to a historic vehicle
20 equal to 20% of the refund for a car that is not a historic
21 vehicle.

22 (e) Procedures governing the actual payment of premiums to the
23 association.

24 (f) Reimbursement of each member of the board by the
25 association for actual and necessary expenses incurred on
26 association business.

27 (g) The investment policy of the association.

28 (h) Any other matters required by or necessary to effectively
29 implement this section.

1 (11) The board must include members that would contribute a
2 total of not less than 40% of the total premium calculated under
3 subsection (7) (d). Each board member is entitled to 1 vote. The
4 initial term of office of a board member is 2 years.

5 (12) As part of the plan of operation, the board shall adopt
6 rules providing for the composition of the board and the terms of
7 board members, consistent with the membership composition
8 requirements in subsections (11) and (13). Terms of the board
9 members must be staggered so that the terms of all the board
10 members do not expire at the same time and so that a board member
11 does not serve a term of more than 4 years.

12 (13) The board must consist of 5 board members and the
13 director, who shall serve as an ex officio member of the board
14 without vote.

15 (14) The director shall appoint the board members. A board
16 member shall serve until his or her successor is selected and
17 qualified. The board shall elect the chairperson of the board. The
18 director shall fill any vacancy on the board as provided in the
19 plan of operation.

20 (15) The board shall meet as often as the chairperson, the
21 director, or the plan of operation requires, or at the request of
22 any 3 board members. The chairperson may vote on all issues. Four
23 board members constitute a quorum.

24 (16) The board shall furnish to each member of the association
25 an annual report of the operations of the association in a form and
26 detail as determined by the board.

27 (17) Any amendments to the plan of operation are subject to
28 majority approval by the board, ratification by a majority of the
29 membership of the association having a vote, with voting rights

1 being apportioned according to the premiums charged in subsection
2 (7) (d), and approval by the director.

3 (18) An insurer authorized to write insurance providing the
4 security required by section ~~3101(1)~~**3101** in this state, as
5 provided in this section, is bound by and shall formally subscribe
6 to and participate in the plan of operation as a condition of
7 maintaining its authority to transact insurance in this state.

8 (19) The association is subject to all the reporting, loss
9 reserve, and investment requirements of the director to the same
10 extent as is a member of the association.

11 (20) Premiums charged members by the association must be
12 recognized in the rate-making procedures for insurance rates in the
13 same manner that expenses and premium taxes are recognized. If a
14 member of the association passes on any portion of the premium
15 payable under this section to an insured, the amount passed on must
16 equal the portion of the premium payable by the member under this
17 section attributable to the car or historic vehicle insured,
18 including any adjustments for excesses or deficiencies from a
19 previous period.

20 (21) The director or an authorized representative of the
21 director may visit the association at any time and examine any and
22 all of the association's affairs. Beginning July 1, 2022, and every
23 third year after 2022, the director shall engage 1 or more
24 independent actuaries to examine the affairs and records of the
25 association for the previous 3 years. The actuarial examination
26 must be conducted using sound actuarial principles consistent with
27 the applicable statements of principles and the code of
28 professional conduct adopted by the Casualty Actuarial Society. By
29 September 1, 2022 and by September 1 of every third year after

1 2022, the director shall provide a report to the legislature on the
2 results of the audit conducted under this subsection.

3 (22) If the actuarial examination under subsection (21) shows
4 that the assets of the association exceed 120% of its liabilities,
5 including incurred but not reported liabilities, and if the refund
6 will not threaten the association's ongoing ability to provide
7 reimbursements for personal protection insurance benefits based on
8 sound actuarial principles consistent with the applicable
9 statements of principles and the code of professional conduct
10 adopted by the Casualty Actuarial Society, the director shall order
11 the association to refund an amount equal to the difference between
12 the total excess and 120% of the liabilities of the association,
13 including incurred but not reported liabilities, under subsection
14 (10)(d) and order the members of the association to distribute the
15 refunds under subsection (24).

16 (23) Within 30 days after receiving an order from the director
17 under subsection (22), the association may request a hearing to
18 review the order by filing a written request with the director. The
19 department shall conduct the review as a contested case under the
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
21 24.328.

22 (24) A member of the association shall distribute any refund
23 it receives under subsection (10)(d) to the persons that it insures
24 under policies that provide the security required under section
25 ~~3101(1)~~**3101** or 3103(1), or both, and that are subject to a premium
26 under this section on a uniform basis per car and historic vehicle
27 in a manner and on the date or dates provided by the director in
28 accordance with an order issued by the director. A refund
29 attributable to a historic vehicle must be equal to 20% of the

1 refund for a car that is not a historic vehicle.

2 (25) By September 1 of each year, the association shall
3 prepare, submit to the committees of the senate and house of
4 representatives with jurisdiction over insurance matters, and post
5 on the association website an annual consumer statement, written in
6 a manner intended for the general public. The statement must
7 include all of the following:

8 (a) The number of claims opened during the preceding 12
9 months, the amount expended on the claims, and the future
10 anticipated costs of the claims.

11 (b) For each of the preceding 10 years, the total number of
12 open claims, the amount expended on the claims, and the anticipated
13 future costs of the claims.

14 (c) For each of the preceding 10 years, the total number of
15 claims closed and the amount expended on the claims.

16 (d) For each of the preceding 10 years, the ratio of claims
17 opened to claims closed.

18 (e) For each of the preceding 10 years, the average length of
19 open claims.

20 (f) A statement of the current financial condition of the
21 association and the reasons for any deficit or surplus in collected
22 assessments compared to losses.

23 (g) A statement of the assumptions, methodology, and data used
24 to make revenue projections. As used in this subdivision, "revenue"
25 means return on investments.

26 (h) A statement of the assumptions, methodology, and data used
27 to make cost projections.

28 (i) A list of the association's assets, sorted by category or
29 type of asset, such as stocks, bonds, or mutual funds, and the

1 expected return on each asset.

2 (j) The total amount of the association's discounted and
3 undiscounted liabilities and a description and explanation of the
4 liabilities, including an explanation of the association's
5 definition of the terms discounted and undiscounted.

6 (k) Measures taken by the association to contain costs.

7 (l) A statement explaining what portion of the assessment to
8 insureds as recognized in rates under subsection (20) is
9 attributable to claims occurring in the previous 12 months,
10 administrative costs, and the amount, if any, to adjust for past
11 deficits.

12 (m) A statement explaining any qualifications identified by
13 the independent auditors in the most recent audit report prepared
14 under subsection (21).

15 (n) A loss payment summary for each of the preceding years by
16 category.

17 (o) For each of the preceding 10 years, an injury type
18 summary, categorizing the injuries suffered by claimants the
19 payment of whose claims are being reimbursed by the association, by
20 brain injuries, injuries resulting in quadriplegia, injuries
21 resulting in paraplegia, burn injuries, and other injuries.

22 (p) A summary of investment returns over the preceding 10
23 years showing the investment balance, the investment gain, and the
24 percentage return on the investment balance.

25 (q) A summary of the mortality assumptions used in making cost
26 projections.

27 (r) A summary of any financial practices that differ from
28 those found in the National Association of Insurance Commissioners
29 Accounting Practices and Procedures Manual.

1 (26) By September 1 of each year, the association shall
2 prepare and provide to the committees of the senate and house of
3 representatives with jurisdiction over insurance matters an annual
4 report of the association. The report must contain all of the
5 following:

6 (a) An executive summary.

7 (b) A discussion of the mortality assumptions used by the
8 association in making cost projections.

9 (c) An evaluation of the accuracy of the association's
10 actuarial assumptions over the preceding 5 years.

11 (d) The annual consumer statement prepared under subsection
12 (25).

13 (e) Anything else the association determines is necessary to
14 advise the legislature about the operations of the association.

15 **(27) Annually, within 15 days after the association charges**
16 **members the total premium under subsection (7) (d), the association**
17 **shall disclose to the public on its website all data used in**
18 **computing the premium and expected losses and expenses, including**
19 **the amount that covers incurred but not reported losses for the**
20 **period and any adjustment for any excess or deficient premiums from**
21 **previous periods and the actuarial computation used in making these**
22 **determinations, including estimates and assumptions. The disclosure**
23 **must include, but not be limited to, all of the following:**

24 (a) The actuarial computation used in making determinations of
25 unpaid losses and loss adjustment expenses.

26 (b) All documents used in establishing the following:

27 (i) The calculation of the present value of disbursements
28 expected to be made in the ultimate settlement of the claims
29 reported.

1 (ii) The actuarial tables used to reflect the probabilities of
2 each claimant surviving to incur the costs projected.

3 (iii) The calculation of incurred but not reported losses.

4 (iv) The actuarial assumptions and calculations used in
5 producing the short-term discount rate and the long-term discount
6 rate.

7 (v) The forecasts producing the economic assumptions for claim
8 cost inflation and investment returns used.

9 (vi) The current economic data and historical long-term
10 Consumer Price Index data for any cost component categories used in
11 producing inflation assumptions.

12 (vii) The loss development analysis undertaken in connection
13 with the provision for unpaid losses and loss adjustment expenses.

14 (viii) The trend analysis for both frequency and severity
15 undertaken in connection with the provision for unpaid losses and
16 loss adjustment expenses.

17 (c) The annual actuarial evaluation used in establishing the
18 premium.

19 (d) The annual assessment reports of members used in
20 establishing the premium.

21 (e) The annuity model used by the opining actuary in his or
22 her actuarial opinion projecting future payment streams at the
23 claimant level and the mortality adjustment applied.

24 (f) Any explanatory memorandum explaining the various
25 components of the premium and the judgments made to produce the
26 premium.

27 (28) ~~(27)~~—The association does not have liability for losses
28 occurring before July 1, 1978. After July 1, 2020, the association
29 does not have liability for an ultimate loss under personal

1 protection insurance coverage for a motor vehicle accident policy
2 to which a limit under section 3107c(1)(a), (b), or (c) is
3 applicable.

4 **(29)** ~~(28)~~—As used in this section:

5 (a) "Association" means the catastrophic claims association
6 created in subsection (1).

7 (b) "Board" means the board of directors of the association
8 created in subsection (9).

9 (c) "Car" includes a motorcycle but does not include a
10 historic vehicle.

11 (d) "Consumer Price Index" means the percentage of change in
12 the Consumer Price Index for all urban consumers in the United
13 States city average for all items for the 24 months before October
14 1 of the year before the July 1 effective date of the biennial
15 adjustment under subsection (2)(o) as reported by the United States
16 Department of Labor, Bureau of Labor Statistics, and as certified
17 by the director.

18 (e) "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 (f) "Motor vehicle accident policy" means a policy providing
22 the coverages required under section ~~3101(1)~~-**3101**.

23 (g) "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.