

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3104 Catastrophic claims association; board of directors; plan of operation; annual report; actuarial examination; refund; hearing; annual consumer statement; liability of association; definitions.

Sec. 3104. (1) The catastrophic claims association is created as an unincorporated, nonprofit association. Each insurer engaged in writing insurance coverages that provide the security required by section 3101(1) in this state, as a condition of its authority to transact insurance in this state, shall be a member of the association and is bound by the plan of operation of the association. An insurer engaged in writing insurance coverages that provide the security required by section 3103(1) in this state, as a condition of its authority to transact insurance in this state, is considered to be a member of the association, but only for purposes of premiums under subsection (7)(d). Except as expressly provided in this section, the association is not subject to any laws of this state with respect to insurers, but in all other respects the association is subject to the laws of this state to the extent that the association would be if it were an insurer organized and subsisting under chapter 50.

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

- (a) For a motor vehicle accident policy issued or renewed before July 1, 2002, \$250,000.00.
- (b) For a motor vehicle accident policy issued or renewed during the period July 1, 2002 to June 30, 2003, \$300,000.00.
- (c) For a motor vehicle accident policy issued or renewed during the period July 1, 2003 to June 30, 2004, \$325,000.00.
- (d) For a motor vehicle accident policy issued or renewed during the period July 1, 2004 to June 30, 2005, \$350,000.00.
- (e) For a motor vehicle accident policy issued or renewed during the period July 1, 2005 to June 30, 2006, \$375,000.00.
- (f) For a motor vehicle accident policy issued or renewed 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. Beginning July 1, 2021, this \$580,000.00 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 section 3101(1) in this state.

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

(5) An unsatisfied net liability to the association of an insolvent member must be assumed by and

apportioned among the remaining members of the association as provided in the plan of operation. The association has all rights allowed by law on behalf of the remaining members against the estate or funds of the insolvent member for money due the association.

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

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

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

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

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

(d) In a manner provided for in the plan of operation, calculate and charge to members of the association a total premium sufficient to cover the expected losses and expenses of the association that the association will likely incur during the period for which the premium is applicable. The total premium must include an amount to cover incurred but not reported losses for the period and must be adjusted for any excess or deficient premiums from previous periods. Excesses or deficiencies from previous periods must either be fully adjusted in a single period or be adjusted over several periods in a manner provided for in the plan of operation. Each member must be charged an amount equal to that member's total written car years of insurance providing the security required by section 3101(1) or 3103(1), or both, written in this state during the period to which the premium applies, with the total written car years of insurance multiplied by the applicable average premium per car. The average premium per car is the total premium, as adjusted for any excesses or deficiencies, divided by the total written car years of insurance providing the security required by section 3101(1) or 3103(1), or both, written in this state of all members during the period to which the premium applies, excluding cars insured under a policy with a coverage limit under section 3107c(1)(a), (b), or (c), cars as to which an election to not maintain personal protection insurance benefits has been made under section 3107d, or as to which an exclusion under section 3109a(2) applies, except for any portion of total premium that is an adjustment for a deficiency in a previous period. A member may not be charged a premium for a car insured under a policy with a coverage limit under section 3107c(1)(a), (b), or (c), as to which an election to not maintain personal protection insurance benefits has been made under section 3107d, or as to which an exclusion under section 3109a(2) applies, other than for the portion of the total premium attributable to an adjustment for a deficiency in a previous period. A member must be charged a premium for a historic vehicle that is insured with the member of 20% of the premium charged for a car insured with the member.

(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.

(f) Receive and distribute all 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.

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

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

(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 does not create any direct liability against the individual members of the association. The association may provide for the indemnification of its members, members of the board of directors of the association, and officers, employees, and other persons lawfully acting on behalf of the association.

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

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

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

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

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

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

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

(10) The plan of operation must provide for all of the following:

(a) The establishment of necessary facilities.

(b) The management and operation of the association.

(c) Procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods. The plan must require that any deficiency from a prior period be amortized over not fewer than 15 years.

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

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

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

(g) The investment policy of the association.

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

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

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

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

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

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

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

(17) Any amendments to the plan of operation are subject to majority approval by the board, ratification by a majority of the membership of the association having a vote, with voting rights being apportioned according to the premiums charged in subsection (7)(d), and approval by the director.

(18) 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 of operation as a condition of maintaining its authority to transact insurance in this state.

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

(20) Premiums charged members by the association must be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized. If a member of the

association passes on any portion of the premium payable under this section to an insured, the amount passed on must equal the portion of the premium payable by the member under this section attributable to the car or historic vehicle insured, including any adjustments for excesses or deficiencies from a previous period.

(21) The director or an authorized representative of the director may visit the association at any time and examine any and all of the association's affairs. Beginning July 1, 2022, and every third year after 2022, the director shall engage 1 or more independent actuaries to examine the affairs and records of the association for the previous 3 years. The actuarial examination must be conducted using sound actuarial principles consistent with the applicable statements of principles and the code of professional conduct adopted by the Casualty Actuarial Society. By September 1, 2022 and by September 1 of every third year after 2022, the director shall provide a report to the legislature on the results of the audit conducted under this subsection.

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

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

(24) A member of the association shall distribute any refund it receives under subsection (10)(d) to the persons that it insures under policies that provide the security required under section 3101(1) or 3103(1), or both, and that are subject to a premium under this section on a uniform basis per car and historic vehicle in a manner and on the date or dates provided by the director in accordance with an order issued by the director. A refund attributable to a historic vehicle must be equal to 20% of the refund for a car that is not a historic vehicle.

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

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

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

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

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

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

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

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

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

(i) A list of the association's assets, sorted by category or type of asset, such as stocks, bonds, or mutual funds, and the expected return on each asset.

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

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

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

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

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

(o) For each of the preceding 10 years, an injury type summary, categorizing the injuries suffered by

claimants the payment of whose claims are being reimbursed by the association, by brain injuries, injuries resulting in quadriplegia, injuries resulting in paraplegia, burn injuries, and other injuries.

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

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

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

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

(a) An executive summary.

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

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

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

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

(27) The association does not have liability for losses occurring before July 1, 1978. After July 1, 2020, the association does not have liability for an ultimate loss under personal protection insurance coverage for a motor vehicle accident policy to which a limit under section 3107c(1)(a), (b), or (c) is applicable.

(28) As used in this section:

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

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

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

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

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

(f) "Motor vehicle accident policy" means a policy providing the coverages required under section 3101(1).

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

History: Add. 1978, Act 136, Eff. July 1, 1978;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 2001, Act 3, Eff. July 1, 2002;—Am. 2002, Act 662, Eff. July 1, 2003;—Am. 2019, Act 21, Imd. Eff. June 11, 2019.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

For transfer of position of commissioner of office of financial and insurance regulation as member or chairperson of board or commission to director of department of insurance and financial services, see E.R.O. No. 2013-1, compiled at MCL 550.991.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance