

HOUSE BILL No. 4913

June 6, 2001, Introduced by Rep. George and referred to the Committee on Transportation.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3103, 3104, and 3114 (MCL 500.3103,
500.3104, and 500.3114), section 3103 as amended by 1986 PA 173,
section 3104 as amended by 1980 PA 445, and section 3114 as
amended by 1984 PA 372.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3103. ~~—(1)—~~ An owner or registrant of a motorcycle
2 shall ~~provide~~ MAINTAIN security ~~against loss resulting from~~
3 ~~liability imposed by law for property damage, bodily injury, or~~
4 ~~death suffered by a person arising out of the ownership, mainte=~~
5 ~~nance, or use of that motorcycle. The security shall conform~~
6 ~~with the requirements of section 3009(1).~~ FOR PAYMENT OF
7 BENEFITS UNDER PERSONAL PROTECTION INSURANCE, PROPERTY PROTECTION
8 INSURANCE, AND RESIDUAL LIABILITY INSURANCE. SECURITY IS ONLY

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1 REQUIRED TO BE IN EFFECT DURING THE PERIOD THE MOTORCYCLE IS
2 DRIVEN OR MOVED UPON A HIGHWAY. NOTWITHSTANDING ANY OTHER PROVI-
3 SION IN THIS ACT, AN INSURER THAT HAS ISSUED AN INSURANCE POLICY
4 ON A MOTORCYCLE THAT IS NOT DRIVEN OR MOVED UPON A HIGHWAY MAY
5 ALLOW THE INSURED OWNER OR REGISTRANT OF THE MOTORCYCLE TO DELETE
6 A PORTION OF THE COVERAGES UNDER THE POLICY AND MAINTAIN THE COM-
7 PREHENSIVE COVERAGE PORTION OF THE POLICY IN EFFECT.

8 ~~-(2) Each insurer transacting insurance in this state which~~
9 ~~affords coverage for a motorcycle as described in subsection (1)~~
10 ~~also shall offer, to an owner or registrant of a motorcycle,~~
11 ~~security for the payment of first-party medical benefits only, in~~
12 ~~increments of \$5,000.00, payable in the event the owner or regis-~~
13 ~~trant is involved in a motorcycle accident. An insurer providing~~
14 ~~first-party medical benefits may offer, at appropriate premium~~
15 ~~rates, deductibles, provisions for the coordination of these ben-~~
16 ~~efits, and provisions for the subtraction of other benefits pro-~~
17 ~~vided or required to be provided under the laws of any state or~~
18 ~~the federal government, subject to the prior approval of the~~
19 ~~commissioner. These deductibles and provisions shall apply only~~
20 ~~to benefits payable to the person named in the policy, the spouse~~
21 ~~of the insured, and any relative of either domiciled in the same~~
22 ~~household.~~

23 Sec. 3104. (1) An unincorporated, nonprofit association to
24 be known as the catastrophic claims association, hereinafter
25 referred to as the association, is created. Each insurer engaged
26 in writing insurance coverages ~~which~~ THAT provide the security
27 required by section 3101(1) OR 3103 within this state, as a

1 condition of its authority to transact insurance in this state,
2 shall be a member of the association and shall be bound by the
3 plan of operation of the association. ~~Each insurer engaged in~~
4 ~~writing insurance coverages which provide the security required~~
5 ~~by section 3103(1) within this state, as a condition of its~~
6 ~~authority to transact insurance in this state, shall be consid-~~
7 ~~ered a member of the association, but only for purposes of~~
8 ~~assessments under subsection (7)(d).~~ Except as expressly pro-
9 vided in this section, the association ~~shall~~ IS not ~~be~~
10 subject to any laws of this state with respect to insurers, but
11 in all other respects the association ~~shall be~~ IS subject to
12 the laws of this state to the extent that the association would
13 be IF IT were ~~it~~ an insurer organized and subsisting under
14 chapter 50.

15 (2) The association shall provide and each member shall
16 accept indemnification for 100% of the amount of ultimate loss
17 sustained under personal protection insurance coverages in excess
18 of \$250,000.00 in each loss occurrence. As used in this section,
19 "ultimate loss" means the actual loss amounts ~~which~~ THAT a
20 member is obligated to pay and ~~which~~ THAT are paid or payable
21 by the member, and ~~shall~~ DO not include claim expenses. An
22 ultimate loss is incurred by the association on the date ~~which~~
23 THAT the loss occurs.

24 (3) An insurer may withdraw from the association only upon
25 ceasing to write insurance ~~which~~ THAT provides the security
26 required by section 3101(1) OR 3103 in this state.

1 (4) An insurer whose membership in the association has been
2 terminated by withdrawal shall continue to be bound by the plan
3 of operation, and upon withdrawal, all unpaid premiums ~~which~~
4 THAT have been charged to the withdrawing member ~~shall be~~ ARE
5 payable as of the effective date of the withdrawal.

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

12 (6) ~~When~~ IF a member has been merged or consolidated into
13 another insurer or another insurer has reinsured a member's
14 entire business ~~which~~ THAT provides the security required by
15 section 3101(1) OR 3103 in this state, the member and successors
16 in interest of the member ~~shall~~ remain liable for the member's
17 obligations.

18 (7) The association shall do all of the following on behalf
19 of 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 shall promptly
23 report to the association each claim ~~which~~ THAT, on the basis
24 of the injuries or damages sustained, may reasonably be antici-
25 pated to involve the association if the member is ultimately held
26 legally liable for the injuries or damages. Solely for the
27 purpose of reporting claims, the member shall in all instances

1 consider itself legally liable for the injuries or damages. The
2 member shall also advise the association of subsequent develop-
3 ments likely to materially affect the interest of the association
4 in the claim.

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

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

1 this state of all members during the period to which the premium
2 applies. As used in this subdivision, "car" includes a
3 motorcycle.

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

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

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

11 (f) Receive and distribute all sums required by the opera-
12 tion of the association.

13 (g) Establish procedures for reviewing claims procedures and
14 practices of members of the association. If the claims proce-
15 dures or practices of a member are considered inadequate to prop-
16 erly service the liabilities of the association, the association
17 may undertake or may contract with another person, including
18 another member, to adjust or assist in the adjustment of claims
19 for the member on claims ~~which~~ THAT create a potential liabil-
20 ity to the association and may charge the cost of the adjustment
21 to the member.

22 (8) In addition to other powers granted to it by this sec-
23 tion, the association may do all of the following:

24 (a) Sue and be sued in the name of the association. A judg-
25 ment against the association shall not create any direct liabil-
26 ity against the individual members of the association. The
27 association may provide for the indemnification of its members,

1 members of the board of directors of the association, and
2 officers, employees, and other persons lawfully acting on behalf
3 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 person-
8 nel as may be necessary to assure the efficient operation of the
9 association.

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

15 (e) Contract for goods and services, including independent
16 claims management, actuarial, investment, and legal services,
17 from 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 ~~which~~ THAT are necessary or proper to accomplish the
23 purposes of the association and ~~which~~ THAT are not inconsistent
24 with this section or 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 the

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

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

5 (a) The establishment of necessary facilities.

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

7 ~~(c) A preliminary premium, payable by each member in pro-~~
8 ~~portion to its total first-year premium, for initial expenses~~
9 ~~necessary to commence operation of the association.~~

10 (C) ~~(d)~~ Procedures to be utilized in charging premiums,
11 including adjustments from excess or deficient premiums from
12 prior periods.

13 (D) ~~(e)~~ Procedures governing the actual payment of premi-
14 ums to the association.

15 (E) ~~(f)~~ Reimbursement of each member of the board by the
16 association for actual and necessary expenses incurred on associ-
17 ation business.

18 (F) ~~(g)~~ The investment policy of the association.

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

21 (11) ~~Not more than 30 days after the effective date of this~~
22 ~~section, the commissioner shall convene an organizational meeting~~
23 ~~of the board. The board shall be initially composed of 5 members~~
24 ~~of the association appointed by the commissioner to serve as~~
25 ~~directors, and the commissioner or a designated representative of~~
26 ~~the commissioner serving as an ex officio member of the board~~
27 ~~without vote. The initial board and each successor~~ EACH board

1 shall include members ~~which~~ THAT would contribute a total of
2 not less than 40% of the total premium calculated pursuant to
3 subsection (7)(d). Each director shall be entitled to 1 vote.
4 The initial term of office of a director shall be 2 years.

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

12 (13) The board shall consist of 5 directors, and the commis-
13 sioner shall be an ex officio member of the board without vote.

14 (14) Each director shall be appointed by the commissioner
15 and shall serve until that member's successor is selected and
16 qualified. The chairperson of the board shall be elected by the
17 board. A vacancy on the board shall be filled by the commis-
18 sioner consistent with the plan of operation.

19 (15) After the board is appointed, the board shall meet as
20 often as the chairperson, the commissioner, or the plan of opera-
21 tion shall require, or at the request of any 3 members of the
22 board. The chairperson shall retain the right to vote on all
23 issues. Four members of the board shall constitute a quorum.

24 (16) An annual report of the operations of the association
25 in a form and detail as may be determined by the board shall be
26 furnished to each member.

1 (17) Not more than 60 days after the initial organizational
2 meeting of the board, the board shall submit to the commissioner
3 for approval a proposed plan of operation consistent with the
4 objectives and provisions of this section, which shall provide
5 for the economical, fair, and nondiscriminatory administration of
6 the association and for the prompt and efficient provision of
7 indemnity. If a plan is not submitted within this 60-day period,
8 then the commissioner, after consultation with the board, shall
9 formulate and place into effect a plan consistent with this
10 section.

11 (18) The plan of operation, unless approved sooner in writ-
12 ing, shall be considered to meet the requirements of this section
13 if it is not disapproved by written order of the commissioner
14 within 30 days after the date of its submission. Before disap-
15 proval of all or any part of the proposed plan of operation, the
16 commissioner shall notify the board in what respect the plan of
17 operation fails to meet the requirements and objectives of this
18 section. If the board fails to submit a revised plan of opera-
19 tion ~~which~~ THAT meets the requirements and objectives of this
20 section within the 30-day period, the commissioner shall enter an
21 order accordingly and shall immediately formulate and place into
22 effect a plan consistent with the requirements and objectives of
23 this section.

24 (19) The proposed plan of operation or amendments to the
25 plan of operation ~~shall be~~ ARE subject to majority approval by
26 the board, ratified by a majority of the membership having a
27 vote, with voting rights being apportioned according to the

1 premiums charged in subsection (7)(d) and ~~shall be~~ ARE subject
2 to approval by the commissioner.

3 (20) Upon approval by the commissioner and ratification by
4 the members of the plan submitted, or upon the promulgation of a
5 plan by the commissioner, each insurer authorized to write insur-
6 ance providing the security required by section 3101(1) OR 3103
7 in this state, as ~~defined~~ PROVIDED in this section, ~~shall be~~
8 IS bound by and shall formally subscribe to and participate in
9 the plan approved as a condition of maintaining its authority to
10 transact insurance in this state.

11 (21) The association ~~shall be~~ IS subject to all the
12 reporting, loss reserve, and investment requirements of the com-
13 missioner to the same extent as would a member of the
14 association.

15 (22) Premiums charged members by the association shall be
16 recognized in the rate-making procedures for insurance rates in
17 the same manner that expenses and premium taxes are recognized.

18 (23) The commissioner or an authorized representative of the
19 commissioner may visit the association at any time and examine
20 any and all the association's affairs.

21 (24) ~~This section shall take effect on July 1, 1978.~~ The
22 association ~~shall~~ DOES not have liability for losses occurring
23 before ~~the effective date of this section~~ JULY 1, 1978.

24 Sec. 3114. (1) Except as provided in subsections (2) ~~—~~
25 AND (3), ~~and (5),~~ a personal protection insurance policy
26 described in section 3101(1) OR 3103 applies to accidental bodily
27 injury to the person named in the policy, the person's spouse,

1 and a relative of either domiciled in the same household, if the
2 injury arises from a motor vehicle accident OR MOTORCYCLE
3 ACCIDENT. ~~A personal injury insurance policy described in sec-~~
4 ~~tion 3103(2) applies to accidental bodily injury to the person~~
5 ~~named in the policy, the person's spouse, and a relative of~~
6 ~~either domiciled in the same household, if the injury arises from~~
7 ~~a motorcycle accident. When personal protection insurance bene-~~
8 ~~fits or personal injury benefits described in section 3103(2) are~~
9 ~~payable to or for the benefit of an injured person under his or~~
10 ~~her own policy and would also be payable under the policy of his~~
11 ~~or her spouse, relative, or relative's spouse, the injured~~
12 ~~person's insurer shall pay all of the benefits and shall not be~~
13 ~~entitled to recoupment from the other insurer.~~

14 (2) A person suffering accidental bodily injury while an
15 operator or a passenger of a motor vehicle operated in the busi-
16 ness of transporting passengers shall receive the personal pro-
17 tection insurance benefits to which the person is entitled from
18 the insurer of the motor vehicle. This subsection shall not
19 apply to a passenger in the following, unless that passenger is
20 not entitled to personal protection insurance benefits under any
21 other policy:

22 (a) A school bus, as defined by the department of education,
23 providing transportation not prohibited by law.

24 (b) A bus operated by a common carrier of passengers certi-
25 fied by the public service commission.

26 (c) A bus operating under a government sponsored
27 transportation program.

1 (d) A bus operated by or providing service to a nonprofit
2 organization.

3 (e) A taxicab insured as prescribed in section 3101 or
4 3102.

5 (f) A bus operated by a canoe or other watercraft, bicycle,
6 or horse livery used only to transport passengers to or from a
7 destination point.

8 (3) An employee, his or her spouse, or a relative of either
9 domiciled in the same household, who suffers accidental bodily
10 injury while an occupant of a motor vehicle owned or registered
11 by the employer, shall receive personal protection insurance ben-
12 efits to which the employee is entitled from the insurer of the
13 furnished vehicle.

14 (4) Except as provided in subsections (1) to (3), a person
15 suffering accidental bodily injury arising from a motor vehicle
16 accident OR MOTORCYCLE ACCIDENT while an occupant of a motor
17 vehicle OR MOTORCYCLE shall claim personal protection insurance
18 benefits from insurers in the following order of priority:

19 (a) The insurer of the owner or registrant of the MOTOR
20 vehicle OR MOTORCYCLE occupied.

21 (b) The insurer of the operator of the MOTOR vehicle OR
22 MOTORCYCLE occupied.

23 ~~-(5) A person suffering accidental bodily injury arising~~
24 ~~from a motor vehicle accident which shows evidence of the~~
25 ~~involvement of a motor vehicle while an operator or passenger of~~
26 ~~a motorcycle shall claim personal protection insurance benefits~~
27 ~~from insurers in the following order of priority:~~

1 ~~(a) The insurer of the owner or registrant of the motor~~
2 ~~vehicle involved in the accident.~~

3 ~~(b) The insurer of the operator of the motor vehicle~~
4 ~~involved in the accident.~~

5 ~~(c) The motor vehicle insurer of the operator of the motor-~~
6 ~~cycle involved in the accident.~~

7 ~~(d) The motor vehicle insurer of the owner or registrant of~~
8 ~~the motorcycle involved in the accident.~~

9 ~~(6) If 2 or more insurers are in the same order of priority~~
10 ~~to provide personal protection insurance benefits under subsec-~~
11 ~~tion (5), an insurer paying benefits due is entitled to partial~~
12 ~~recoupment from the other insurers in the same order of priority,~~
13 ~~together with a reasonable amount of partial recoupment of the~~
14 ~~expense of processing the claim, in order to accomplish equitable~~
15 ~~distribution of the loss among all of the insurers.~~

16 Enacting section 1. This amendatory act takes effect
17 January 1, 2002.