

HOUSE BILL No. 4490

April 1, 2003, Introduced by Reps. Sak, Spade, Milosch, Clack, Garfield, Minore, Byrum, Tobocman, O'Neil, Vagnozzi, Rivet, Murphy, Bieda, Gillard, Farrah, Dennis, Gielegem, Woodward, Gleason, Accavitti, Law, Wojno, Condino, Stallworth, Elkins, Meisner, Hunter, Zelenko, Anderson, Kooiman, Brown and Plakas and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 134 and 3104 (MCL 500.134 and 500.3104),
section 134 as amended by 1990 PA 256 and section 3104 as amended
by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 134. (1) Every certificate of authority or license in
2 force immediately prior to January 1, 1957 and existing under any
3 act repealed by this act is valid until its original expiration
4 date, unless earlier terminated in accordance with this act.

5 (2) Any plan of operation adopted by an association or
6 facility, and any premium or assessment levied against an insurer
7 member of that association or facility, is hereby validated
8 retroactively to the date of its original adoption or levy and
9 ~~shall continue~~ **continues** in force and effect according to the

1 terms of the plan of operation, premium, or assessment until
2 otherwise changed by the commissioner or the board of directors
3 of the association or facility pursuant to this act.

4 (3) An association or facility or the board of directors of
5 the association or facility is not a state agency and the money
6 of an association or facility is not state money.

7 (4) ~~—A~~ **Except as otherwise provided in section 3104, a**
8 record of an association or facility ~~shall be exempted is~~
9 **exempt** from disclosure pursuant to section 13 of the freedom of
10 information act, ~~Act No. 442 of the Public Acts of 1976, being~~
11 ~~section 15.243 of the Michigan Compiled Laws~~ **1976 PA 442, MCL**
12 **15.243.**

13 (5) Any premium or assessment levied by an association or
14 facility, or any premium or assessment of a similar association
15 or facility formed under a law in force outside this state, is
16 not a burden or special burden for purposes of a calculation
17 under section 476a, and any premium or assessment paid to an
18 association or facility shall not be included in determining the
19 aggregate amount a foreign insurer pays to the commissioner under
20 section 476a.

21 (6) As used in this section, "association or facility" means
22 an association of insurers created under this act and any other
23 association or facility formed under this act as a nonprofit
24 organization of insurer members, including, but not limited to,
25 the following:

26 (a) The Michigan worker's compensation placement facility
27 created under chapter 23.

1 (b) The Michigan basic property insurance association created
2 under ~~section~~ **chapter** 29.

3 (c) The catastrophic claims association created under
4 chapter 31.

5 (d) The Michigan automobile insurance placement facility
6 created under chapter 33.

7 (e) The Michigan life and health insurance guaranty
8 association created under chapter 77.

9 (f) The property and casualty guaranty association created
10 under chapter 79.

11 (g) The assigned claims facility created under section 3171.

12 Sec. 3104. (1) An unincorporated, nonprofit association to
13 be known as the catastrophic claims association, hereinafter
14 referred to as the association, is created. Each insurer engaged
15 in writing insurance coverages that provide the security required
16 by section 3101(1) within this state, as a condition of its
17 authority to transact insurance in this state, shall be a member
18 of the association and ~~shall be~~ **is** bound by the plan of
19 operation of the association. Each insurer engaged in writing
20 insurance coverages that provide the security required by section
21 3103(1) within this state, as a condition of its authority to
22 transact insurance in this state, shall be considered a member of
23 the association, but only for purposes of premiums under
24 subsection (7)(d). Except as expressly provided in this section,
25 the association is not subject to any laws of this state with
26 respect to insurers, but in all other respects the association is
27 subject to the laws of this state to the extent that the

1 association would be if it were an insurer organized and
2 subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

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

1 during the period July 1, 2011 to June 30, 2013, \$500,000.00.
2 Beginning July 1, 2013, this \$500,000.00 amount shall be
3 increased biennially on July 1 of each odd-numbered year, for
4 policies issued or renewed before July 1 of the following
5 odd-numbered year, by the lesser of 6% or the consumer price
6 index, and rounded to the nearest \$5,000.00. This biennial
7 adjustment shall be calculated by the association by January 1 of
8 the year of its July 1 effective date.

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

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

17 (5) An unsatisfied net liability to the association of an
18 insolvent member shall be assumed by and apportioned among the
19 remaining members of the association as provided in the plan of
20 operation. The association has all rights allowed by law on
21 behalf of the remaining members against the estate or funds of
22 the insolvent member for sums due the association.

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

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

3 (a) Assume 100% of all liability as provided in subsection
4 (2).

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

15 (c) Maintain relevant loss and expense data relative to all
16 liabilities of the association and require each member to furnish
17 statistics, in connection with liabilities of the association, at
18 the times and in the form and detail as may be required by the
19 plan of operation.

20 (d) In a manner provided for in the plan of operation,
21 calculate and charge to members of the association a total
22 premium sufficient to cover the expected losses and expenses of
23 the association that the association will likely incur during the
24 period for which the premium is applicable. The premium shall
25 include an amount to cover incurred but not reported losses for
26 the period and may be adjusted for any excess or deficient
27 premiums from previous periods. Excesses or deficiencies from

1 previous periods may be fully adjusted in a single period or may
2 be adjusted over several periods in a manner provided for in the
3 plan of operation. Each member shall be charged an amount equal
4 to that member's total written car years of insurance providing
5 the security required by section 3101(1) or 3103(1), or both,
6 written in this state during the period to which the premium
7 applies, multiplied by the average premium per car. The average
8 premium per car shall be the total premium calculated divided by
9 the total written car years of insurance providing the security
10 required by section 3101(1) or 3103(1) written in this state of
11 all members during the period to which the premium applies. A
12 member shall be charged a premium for a historic vehicle that is
13 insured with the member of 20% of the premium charged for a car
14 insured with the member. As used in this subdivision:

15 (i) "Car" includes a motorcycle but does not include a
16 historic vehicle.

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

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

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

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

27 (f) Receive and distribute all sums required by the operation

1 of the association.

2 (g) Establish procedures for reviewing claims procedures and
3 practices of members of the association. If the claims
4 procedures or practices of a member are considered inadequate to
5 properly service the liabilities of the association, the
6 association may undertake or may contract with another person,
7 including another member, to adjust or assist in the adjustment
8 of claims for the member on claims that create a potential
9 liability to the association and may charge the cost of the
10 adjustment to the member.

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

13 (a) Sue and be sued in the name of the association. A
14 judgment against the association shall not create any direct
15 liability against the individual members of the association. The
16 association may provide for the indemnification of its members,
17 members of the board of directors of the association, and
18 officers, employees, and other persons lawfully acting on behalf
19 of the association.

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

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

26 (d) Pursuant to the plan of operation, adopt reasonable rules
27 for the administration of the association, enforce those rules,

1 and delegate authority, as the board considers necessary to
2 assure the proper administration and operation of the association
3 consistent with the plan of operation.

4 (e) Contract for goods and services, including independent
5 claims management, actuarial, investment, and legal services,
6 from others within or without this state to assure the efficient
7 operation of the association.

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

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

14 (9) A board of directors is created, hereinafter referred to
15 as the board, which ~~shall be~~ is responsible for the operation
16 of the association consistent with the plan of operation and this
17 section.

18 (10) The plan of operation shall provide for all of the
19 following:

20 (a) The establishment of necessary facilities.

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

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

25 (d) Procedures governing the actual payment of premiums to
26 the association.

27 (e) Reimbursement of each member of the board by the

1 association for actual and necessary expenses incurred on
2 association business.

3 (f) The investment policy of the association.

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

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

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

18 (13) The board shall consist of 5 directors, and the
19 commissioner shall be an ex officio member of the board without
20 vote.

21 (14) Each director shall be appointed by the commissioner and
22 shall serve until that member's successor is selected and
23 qualified. The chairperson of the board shall be elected by the
24 board. A vacancy on the board shall be filled by the
25 commissioner consistent with the plan of operation.

26 (15) After the board is appointed, the board shall meet as
27 often as the chairperson, the commissioner, or the plan of

1 operation shall require, or at the request of any 3 members of
2 the board. The chairperson shall retain the right to vote on all
3 issues. Four members of the board constitute a quorum.

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

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

17 (18) The plan of operation, unless approved sooner in
18 writing, shall be considered to meet the requirements of this
19 section if it is not disapproved by written order of the
20 commissioner within 30 days after the date of its submission.
21 Before disapproval of all or any part of the proposed plan of
22 operation, the commissioner shall notify the board in what
23 respect the plan of operation fails to meet the requirements and
24 objectives of this section. If the board fails to submit a
25 revised plan of operation that meets the requirements and
26 objectives of this section within the 30-day period, the
27 commissioner shall enter an order accordingly and shall

1 immediately formulate and place into effect a plan consistent
2 with the requirements and objectives of this section.

3 (19) The proposed plan of operation or amendments to the plan
4 of operation are subject to majority approval by the board,
5 ratified by a majority of the membership having a vote, with
6 voting rights being apportioned according to the premiums charged
7 in subsection (7)(d) and are subject to approval by the
8 commissioner.

9 (20) Upon approval by the commissioner and ratification by
10 the members of the plan submitted, or upon the promulgation of a
11 plan by the commissioner, each insurer authorized to write
12 insurance providing the security required by section 3101(1) in
13 this state, as provided in this section, is bound by and shall
14 formally subscribe to and participate in the plan approved as a
15 condition of maintaining its authority to transact insurance in
16 this state.

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

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

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

26 (24) The association does not have liability for losses
27 occurring before July 1, 1978.

1 (25) The business that the board may perform shall be
2 conducted at a public meeting of the board held in compliance
3 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

4 (26) A writing prepared, owned, used, in the possession of,
5 or retained by the board in the performance of an official
6 function is subject to the freedom of information act, 1976
7 PA 442, MCL 15.231 to 15.246.

8 (27) ~~—(25)—~~ As used in this section:

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

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

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

22 Enacting section 1. This amendatory act does not take
23 effect unless Senate Bill No. _____ or House Bill No. 4491
24 (request no. 01117'03 a) of the 92nd Legislature is enacted into
25 law.