

# SENATE BILL No. 389

April 14, 2005, Introduced by Senators BASHAM, JACOBS, CHERRY, THOMAS, SCOTT, CLARKE, PRUSI, CLARK-COLEMAN and SCHAUER and referred to the Committee on Banking and Financial Institutions.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3104. (1) An unincorporated, nonprofit association to be  
2 known as the catastrophic claims association, hereinafter referred  
3 to as the association, is created. Each insurer engaged in writing  
4 insurance coverages that provide the security required by section  
5 3101(1) within this state, as a condition of its authority to  
6 transact insurance in this state, shall be a member of the  
7 association and shall be bound by the plan of operation of the  
8 association. Each insurer engaged in writing insurance coverages  
9 that provide the security required by section 3103(1) within this

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

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

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

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

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

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

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

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

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

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

1 during the period July 1, 2008 to June 30, 2009, \$440,000.00.

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

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

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

8 Beginning July 1, 2013, this \$500,000.00 amount shall be increased  
9 biennially on July 1 of each odd-numbered year, for policies issued  
10 or renewed before July 1 of the following odd-numbered year, by the  
11 lesser of 6% or the consumer price index, and rounded to the  
12 nearest \$5,000.00. This biennial adjustment shall be calculated by  
13 the association by January 1 of the year of its July 1 effective  
14 date.

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

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

23 (5) An unsatisfied net liability to the association of an  
24 insolvent member shall be assumed by and apportioned among the  
25 remaining members of the association as provided in the plan of  
26 operation. The association has all rights allowed by law on behalf  
27 of the remaining members against the estate or funds of the

1 insolvent member for sums due the association.

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

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

9 (a) Assume 100% of all liability as provided in subsection  
10 (2).

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

20 (c) Maintain relevant loss and expense data relative to all  
21 liabilities of the association and require each member to furnish  
22 statistics, in connection with liabilities of the association, at  
23 the times and in the form and detail as may be required by the plan  
24 of operation.

25 (d) In a manner provided for in the plan of operation,  
26 calculate and charge to members of the association a total premium  
27 sufficient to cover the expected losses and expenses of the

1 association that the association will likely incur during the  
2 period for which the premium is applicable. The premium shall  
3 include an amount to cover incurred but not reported losses for the  
4 period and may be adjusted for any excess or deficient premiums  
5 from previous periods. Excesses or deficiencies from previous  
6 periods may be fully adjusted in a single period or may be adjusted  
7 over several periods in a manner provided for in the plan of  
8 operation. Each member shall be charged an amount equal to that  
9 member's total written car years of insurance providing the  
10 security required by section 3101(1) or 3103(1), or both, written  
11 in this state during the period to which the premium applies,  
12 multiplied by the average premium per car. The average premium per  
13 car shall be the total premium calculated divided by the total  
14 written car years of insurance providing the security required by  
15 section 3101(1) or 3103(1) written in this state of all members  
16 during the period to which the premium applies. A member shall be  
17 charged a premium for a historic vehicle that is insured with the  
18 member of 20% of the premium charged for a car insured with the  
19 member. As used in this subdivision:

20 (i) "Car" includes a motorcycle but does not include a historic  
21 vehicle.

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

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

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

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

5           (f) Receive and distribute all sums required by the operation  
6 of the association.

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

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

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

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

27           (c) Provide for appropriate housing, equipment, and personnel

1 as may be necessary to assure the efficient operation of the  
2 association.

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

8 (e) Contract for goods and services, including independent  
9 claims management, actuarial, investment, and legal services, from  
10 others within or without this state to assure the efficient  
11 operation of the association.

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

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

18 (9) A board of directors is created, hereinafter referred to  
19 as the board, which shall be responsible for the operation of the  
20 association consistent with the plan of operation and this section.

21 (10) The plan of operation shall provide for all of the  
22 following:

23 (a) The establishment of necessary facilities.

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

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

27 (d) Procedures governing the actual payment of premiums to the

1 association.

2 (e) Reimbursement of each member of the board by the  
3 association for actual and necessary expenses incurred on  
4 association business.

5 (f) The investment policy of the association.

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

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

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

19 (13) The board shall consist of ~~5~~ 6 directors, **1 OF WHOM**  
20 **SHALL BE A MEMBER OF THE GENERAL PUBLIC**, and the commissioner shall  
21 be an ex officio member of the board without vote.

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

27 (15) After the board is appointed, the board shall meet as



1 often as the chairperson, the commissioner, or the plan of  
2 operation shall require, or at the request of any ~~3~~ 4 members of  
3 the board. The chairperson shall retain the right to vote on all  
4 issues. Four members of the board constitute a quorum.

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

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

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

1 immediately formulate and place into effect a plan consistent with  
2 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 voting  
6 rights being apportioned according to the premiums charged in  
7 subsection (7)(d) and are subject to approval by the commissioner.

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

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

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

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

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

26 (25) As used in this section:

27 (a) "Consumer price index" means the percentage of change in

1 the consumer price index for all urban consumers in the United  
2 States city average for all items for the 24 months prior to  
3 October 1 of the year prior to the July 1 effective date of the  
4 biennial adjustment under subsection (2)(k) as reported by the  
5 United States department of labor, bureau of labor statistics, and  
6 as certified by the commissioner.

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

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