

HOUSE BILL No. 5423

March 25, 2014, Introduced by Rep. Callton and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 102 and 3104 (MCL 500.102 and 500.3104),
section 102 as amended by 2000 PA 252 and section 3104 as amended
by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. **AS USED IN THIS ACT:**

2 **(A)** ~~(1) "Commissioner" as used in this act means the~~
3 ~~commissioner of the office of financial and insurance~~
4 ~~services.~~**DIRECTOR.**

5 **(B)** ~~(2) "Department" as used in this act means the office~~
6 **DEPARTMENT** of **INSURANCE AND** financial and insurance services.

7 **(C) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.**

8 Sec. 3104. (1) ~~An~~**THE CATASTROPHIC CLAIMS ASSOCIATION IS**
9 **CREATED AS AN** unincorporated, nonprofit association. ~~to be known as~~

~~the catastrophic claims association, hereinafter referred to as the~~
~~association, is created.~~ Each insurer engaged in writing insurance
coverages that provide the security required by section 3101(1)
within this state, as a condition of its authority to transact
insurance in this state, shall be a member of the association and
~~shall be~~ **IS** bound by the plan of operation of the association. Each
insurer engaged in writing insurance coverages that provide the
security required by section 3103(1) within this state, as a
condition of its authority to transact insurance in this state,
shall be considered 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) 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

1 during the period July 1, 2004 to June 30, 2005, \$350,000.00.

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

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

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

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

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

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

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

16 Beginning July 1, 2013, this \$500,000.00 amount shall be increased
17 biennially on July 1 of each odd-numbered year, for policies issued
18 or renewed before July 1 of the following odd-numbered year, by the
19 lesser of 6% or the consumer price index, and rounded to the
20 nearest \$5,000.00. This biennial adjustment shall be calculated by
21 the association by January 1 of the year of its July 1 effective
22 date.

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

26 (4) An insurer whose membership in the association has been
27 terminated by withdrawal shall continue to be bound by the plan of

1 operation, and upon withdrawal, all unpaid premiums that have been
2 charged to the withdrawing member are payable as of the effective
3 date of the withdrawal.

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

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

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

17 (a) Assume 100% of all liability as provided in subsection
18 (2).

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

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

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

1 (i) "Car" includes a motorcycle but does not include a historic
2 vehicle.

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

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

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

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

13 (f) Receive and distribute all ~~sums~~**MONEY** required by the
14 operation of the association.

15 (g) Establish procedures for reviewing claims procedures and
16 practices of members of the association. If the claims procedures
17 or practices of a member are considered inadequate to properly
18 service the liabilities of the association, the association may
19 undertake or may contract with another person, including another
20 member, to adjust or assist in the adjustment of claims for the
21 member on claims that create a potential liability to the
22 association and may charge the cost of the adjustment to the
23 member.

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

26 (a) Sue and be sued in the name of the association. A judgment
27 against the association shall not create any direct liability

1 against the individual members of the association. The association
2 may provide for the indemnification of its members, members of the
3 board of directors of the association, and officers, employees, and
4 other persons lawfully acting on behalf of the association.

5 (b) Reinsure all or any portion of its potential liability
6 with reinsurers licensed to transact insurance in this state or
7 approved by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT**.

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

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

16 (e) Contract for goods and services, including independent
17 claims management, actuarial, investment, and legal services, from
18 others within or without this state to assure the efficient
19 operation of the association.

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

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

26 (9) A board of directors is created ~~, hereinafter referred to~~
27 ~~as the board, which shall be responsible for the operation of~~ **AND**

1 **SHALL OPERATE** the association consistent with the plan of operation
2 and this 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) Procedures to be utilized in charging premiums, including
8 adjustments from excess or deficient premiums from prior periods.

9 (d) Procedures governing the actual payment of premiums to the
10 association.

11 (e) Reimbursement of each member of the board by the
12 association for actual and necessary expenses incurred on
13 association business.

14 (f) The investment policy of the association.

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

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

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

1 (13) The board shall consist of 5 directors, and the
2 ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** shall be an ex officio
3 member of the board without vote.

4 (14) Each director shall be appointed by the ~~commissioner~~
5 **DIRECTOR OF THE DEPARTMENT** and shall serve until that member's
6 successor is selected and qualified. The chairperson of the board
7 shall be elected by the board. A vacancy on the board shall be
8 filled by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** consistent
9 with the plan of operation.

10 (15) ~~After the board is appointed, the~~**THE** board shall meet as
11 often as the chairperson, the ~~commissioner~~**DIRECTOR OF THE**
12 **DEPARTMENT**, or the plan of operation ~~shall require~~**REQUIRES**, or at
13 the request of any 3 members of the board. The chairperson ~~shall~~
14 ~~retain the right to~~**MAY** vote on all issues. Four members of the
15 board constitute a quorum.

16 (16) An annual report of the operations of the association
17 **THAT IS** in a form and detail as ~~may be~~ determined by the board
18 shall be furnished to each member.

19 ~~—— (17) Not more than 60 days after the initial organizational~~
20 ~~meeting of the board, the board shall submit to the commissioner~~
21 ~~for approval a proposed plan of operation consistent with the~~
22 ~~objectives and provisions of this section, which shall provide for~~
23 ~~the economical, fair, and nondiscriminatory administration of the~~
24 ~~association and for the prompt and efficient provision of~~
25 ~~indemnity. If a plan is not submitted within this 60 day period,~~
26 ~~then the commissioner, after consultation with the board, shall~~
27 ~~formulate and place into effect a plan consistent with this~~

1 ~~section.~~

2 ~~—— (18) The plan of operation, unless approved sooner in writing,~~
 3 ~~shall be considered to meet the requirements of this section if it~~
 4 ~~is not disapproved by written order of the commissioner within 30~~
 5 ~~days after the date of its submission. Before disapproval of all or~~
 6 ~~any part of the proposed plan of operation, the commissioner shall~~
 7 ~~notify the board in what respect the plan of operation fails to~~
 8 ~~meet the requirements and objectives of this section. If the board~~
 9 ~~fails to submit a revised plan of operation that meets the~~
 10 ~~requirements and objectives of this section within the 30-day~~
 11 ~~period, the commissioner shall enter an order accordingly and shall~~
 12 ~~immediately formulate and place into effect a plan consistent with~~
 13 ~~the requirements and objectives of this section.~~

14 (17) ~~(19) The proposed plan of operation or~~ **ANY** amendments to
 15 the plan of operation **OF THE ASSOCIATION** are subject to majority
 16 approval by the board, ~~ratified~~ **AND RATIFICATION** by a majority of
 17 the membership having a vote, with voting rights being apportioned
 18 according to the premiums charged in subsection (7)(d) and are
 19 subject to approval by the ~~commissioner.~~ **DIRECTOR OF THE DEPARTMENT.**

20 (18) ~~(20) Upon approval by the commissioner and ratification~~
 21 ~~by the members of the plan submitted, or upon the promulgation of a~~
 22 ~~plan by the commissioner, each~~ **AN** insurer authorized to write
 23 insurance providing the security required by section 3101(1) in
 24 this state, as provided in this section, is bound by and shall
 25 formally subscribe to and participate in the plan ~~approved~~ **OF**
 26 **OPERATION OF THE ASSOCIATION** as a condition of maintaining its
 27 authority to transact insurance in this state.

1 (19) ~~(21)~~ The association is subject to all the reporting,
2 loss reserve, and investment requirements of the ~~commissioner~~
3 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
4 **THE MEMBERS** of the association.

5 (20) ~~(22)~~ Premiums charged members by the association shall be
6 recognized in the rate-making procedures for insurance rates in the
7 same manner that expenses and premium taxes are recognized.

8 (21) ~~(23)~~ The ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT** or an
9 authorized representative of the ~~commissioner~~ **DIRECTOR OF THE**
10 **DEPARTMENT** may visit the association at any time and examine any
11 and all **OF** the association's affairs.

12 (22) ~~(24)~~ The association does not have liability for losses
13 occurring before July 1, 1978.

14 (23) **NOTWITHSTANDING SECTION 134, THE BOARD SHALL DISCLOSE TO**
15 **THE PUBLIC THE CALCULATIONS AND CHARGES TO MEMBERS UNDER SUBSECTION**
16 **(7) (D) .**

17 (24) ~~(25)~~ As used in this section:

18 (A) **"ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION**
19 **CREATED IN SUBSECTION (1) .**

20 (B) **"BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION**
21 **CREATED IN SUBSECTION (9) .**

22 (C) ~~(a)~~ "Consumer price index" means the percentage of change
23 in the consumer price index for all urban consumers in the United
24 States city average for all items for the 24 months prior to
25 October 1 of the year ~~prior to~~ **BEFORE** the July 1 effective date of
26 the biennial adjustment under subsection (2) (k) as reported by the
27 United States department of labor, bureau of labor statistics, and

1 as certified by the commissioner.

2 (D) ~~(b)~~—"Motor vehicle accident policy" means a policy
3 providing the coverages required under section 3101(1).

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