

HOUSE BILL No. 5538

April 12, 2016, Introduced by Rep. Lucido and referred to the Committee on Insurance.

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

1 condition of its authority to transact insurance in this state,
2 ~~shall be~~ **IS** considered a member of the association, but only for
3 purposes of premiums under subsection (7)(d). Except as expressly
4 provided in this section, the association is not subject to any
5 laws of this state with respect to insurers, but in all other
6 respects the association is subject to the laws of this state to
7 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~~**MUST** be
9 increased biennially on July 1 of each odd-numbered year, for
10 policies issued or renewed before July 1 of the following odd-
11 numbered year, by the lesser of 6% or the consumer price index, and
12 rounded to the nearest \$5,000.00. ~~This~~**THE ASSOCIATION SHALL**
13 **CALCULATE THIS** biennial adjustment ~~shall be calculated by the~~
14 ~~association~~ by January 1 of the year of its July 1 effective 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~~**CONTINUES** to be bound by
20 the plan of operation, and upon withdrawal, all unpaid premiums
21 that have been charged to the withdrawing member are payable as of
22 the effective date of the withdrawal.

23 (5) An unsatisfied net liability to the association of an
24 insolvent member ~~shall~~**MUST** 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~~**MONEY** 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~~**MUST** 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~~**MUST**
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~~**MUST** be charged an amount equal to
9 that 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~~**IS** 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~~**MUST**
17 be charged a premium for a historic vehicle that is insured with
18 the 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
21 historic 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
2 after the premium charge.

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

5 (f) Receive and distribute all ~~sums~~-**MONEY** required by the
6 operation 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~~-**DOES** 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~~-**DIRECTOR OF THE DEPARTMENT**.

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~~ **IN** or ~~without~~ **OUTSIDE OF** this state to assure the
11 efficient 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~~ **AND**
20 **SHALL OPERATE** the association consistent with the plan of operation
21 and this section.

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

24 (a) The establishment of necessary facilities.

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

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

1 (d) Procedures governing the actual payment of premiums to the
2 association.

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

6 (f) The investment policy of the association.

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

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

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

21 (13) The board ~~shall~~ **MUST** consist of 5 directors ~~and the~~
22 ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT, WHO** shall ~~be~~ **SERVE AS** an
23 ex officio member of the board without vote.

24 (14) ~~Each director~~ **THE DIRECTOR OF THE DEPARTMENT** shall ~~be~~
25 ~~appointed by the commissioner and~~ **APPOINT THE DIRECTORS. A DIRECTOR**
26 shall serve until ~~that member's~~ **HIS OR HER** successor is selected
27 and qualified. The **BOARD SHALL ELECT THE** chairperson of the board.

1 ~~shall be elected by the board. A~~ **THE DIRECTOR OF THE DEPARTMENT**
2 **SHALL FILL ANY** vacancy on the board ~~shall be filled by the~~
3 ~~commissioner~~ consistent with the plan of operation.

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

10 (16) ~~An~~ **THE BOARD SHALL FURNISH TO EACH MEMBER AN** annual
11 report of the operations of the association in a form and detail as
12 may be determined by the board. ~~shall be furnished to each member.~~

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

23 ~~—— (18) The plan of operation, unless approved sooner in writing,~~
24 ~~shall be considered to meet the requirements of this section if it~~
25 ~~is not disapproved by written order of the commissioner within 30~~
26 ~~days after the date of its submission. Before disapproval of all or~~
27 ~~any part of the proposed plan of operation, the commissioner shall~~

1 ~~notify the board in what respect the plan of operation fails to~~
 2 ~~meet the requirements and objectives of this section. If the board~~
 3 ~~fails to submit a revised plan of operation that meets the~~
 4 ~~requirements and objectives of this section within the 30 day~~
 5 ~~period, the commissioner shall enter an order accordingly and shall~~
 6 ~~immediately formulate and place into effect a plan consistent with~~
 7 ~~the requirements and objectives of this section.~~

8 (17) ~~(19) The proposed plan of operation or ANY~~ amendments to
 9 the plan of operation **OF THE ASSOCIATION** are subject to majority
 10 approval by the board, ~~ratified~~ **RATIFICATION** by a majority of the
 11 membership having a vote, with voting rights being apportioned
 12 according to the premiums charged in subsection (7) (d), and ~~are~~
 13 ~~subject to approval by the commissioner.~~ **DIRECTOR OF THE DEPARTMENT.**

14 (18) ~~(20) Upon approval by the commissioner and ratification~~
 15 ~~by the members of the plan submitted, or upon the promulgation of a~~
 16 ~~plan by the commissioner, each AN~~ insurer authorized to write
 17 insurance providing the security required by section 3101(1) in
 18 this state, as provided in this section, is bound by and shall
 19 formally subscribe to and participate in the plan ~~approved~~ **OF**
 20 **OPERATION** as a condition of maintaining its authority to transact
 21 insurance in this state.

22 (19) ~~(21) The association is subject to all the reporting,~~
 23 ~~loss reserve, and investment requirements of the commissioner~~
 24 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
 25 **THE MEMBERS** of the association.

26 (20) ~~(22) Premiums charged members by the association shall~~
 27 **MUST** be recognized in the rate-making procedures for insurance

1 rates in the same manner that expenses and premium taxes are
2 recognized.

3 (21) ~~(23)~~—The ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** or an
4 authorized representative of the ~~commissioner~~**DIRECTOR OF THE**
5 **DEPARTMENT** may visit the association at any time and examine any
6 and all **OF** the association's affairs.

7 (22) ~~(24)~~—The association does not have liability for losses
8 occurring before July 1, 1978.

9 (23) **ANNUALLY, WITHIN 15 DAYS AFTER THE ASSOCIATION CHARGES**
10 **MEMBERS THE TOTAL PREMIUM UNDER SUBSECTION (7) (D), THE ASSOCIATION**
11 **SHALL DISCLOSE TO THE PUBLIC ON ITS WEBSITE ALL DATA USED IN**
12 **COMPUTING THE PREMIUM AND EXPECTED LOSSES AND EXPENSES, INCLUDING**
13 **THE AMOUNT THAT COVERS INCURRED BUT NOT REPORTED LOSSES FOR THE**
14 **PERIOD AND ANY ADJUSTMENT FOR ANY EXCESS OR DEFICIENT PREMIUMS FROM**
15 **PREVIOUS PERIODS AND THE ACTUARIAL COMPUTATION USED IN MAKING THESE**
16 **DETERMINATIONS, INCLUDING ESTIMATES AND ASSUMPTIONS. THE DISCLOSURE**
17 **MUST INCLUDE, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:**

18 (A) **THE ACTUARIAL COMPUTATION USED IN MAKING DETERMINATIONS OF**
19 **UNPAID LOSSES AND LOSS ADJUSTMENT EXPENSES.**

20 (B) **ALL DOCUMENTS USED IN ESTABLISHING THE FOLLOWING:**

21 (i) **THE CALCULATION OF THE PRESENT VALUE OF DISBURSEMENTS**
22 **EXPECTED TO BE MADE IN THE ULTIMATE SETTLEMENT OF THE CLAIMS**
23 **REPORTED.**

24 (ii) **THE ACTUARIAL TABLES USED TO REFLECT THE PROBABILITIES OF**
25 **EACH CLAIMANT SURVIVING TO INCUR THE COSTS PROJECTED.**

26 (iii) **THE CALCULATION OF INCURRED BUT NOT REPORTED LOSSES.**

27 (iv) **THE ACTUARIAL ASSUMPTIONS AND CALCULATIONS USED IN**

1 PRODUCING THE SHORT-TERM DISCOUNT RATE AND THE LONG-TERM DISCOUNT
2 RATE.

3 (v) THE FORECASTS PRODUCING THE ECONOMIC ASSUMPTIONS FOR CLAIM
4 COST INFLATION AND INVESTMENT RETURNS USED.

5 (vi) THE CURRENT ECONOMIC DATA AND HISTORICAL LONG-TERM
6 CONSUMER PRICE INDEX DATA FOR ANY COST COMPONENT CATEGORIES USED IN
7 PRODUCING INFLATION ASSUMPTIONS.

8 (vii) THE LOSS DEVELOPMENT ANALYSIS UNDERTAKEN IN CONNECTION
9 WITH THE PROVISION FOR UNPAID LOSSES AND LOSS ADJUSTMENT EXPENSES.

10 (viii) THE TREND ANALYSIS FOR BOTH FREQUENCY AND SEVERITY
11 UNDERTAKEN IN CONNECTION WITH THE PROVISION FOR UNPAID LOSSES AND
12 LOSS ADJUSTMENT EXPENSES.

13 (C) THE ANNUAL ACTUARIAL EVALUATION USED IN ESTABLISHING THE
14 PREMIUM.

15 (D) THE ANNUAL ASSESSMENT REPORTS OF MEMBERS USED IN
16 ESTABLISHING THE PREMIUM.

17 (E) THE ANNUITY MODEL USED BY THE OPINING ACTUARY IN HIS OR
18 HER ACTUARIAL OPINION PROJECTING FUTURE PAYMENT STREAMS AT THE
19 CLAIMANT LEVEL AND THE MORTALITY ADJUSTMENT APPLIED.

20 (F) ANY EXPLANATORY MEMORANDUM EXPLAINING THE VARIOUS
21 COMPONENTS OF THE PREMIUM AND THE JUDGMENTS MADE TO PRODUCE THE
22 PREMIUM.

23 (24) ~~(25)~~ As used in this section:

24 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION
25 CREATED IN SUBSECTION (1).

26 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION
27 CREATED IN SUBSECTION (9).

1 (C) ~~(a)~~—"Consumer price index" means the percentage of change
2 in the consumer price index for all urban consumers in the United
3 States city average for all items for the 24 months ~~prior to~~**BEFORE**
4 October 1 of the year ~~prior to~~**BEFORE** the July 1 effective date of
5 the biennial adjustment under subsection (2)(k) as reported by the
6 United States ~~department of labor, bureau of labor statistics,~~
7 **DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS,** and as certified
8 by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT.**

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

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