

HOUSE BILL NO. 4024

January 10, 2019, Introduced by Reps. LaFave and Rendon and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3104, 3107, 3109a, 3135, and 3157 (MCL 500.3104, 500.3107, 500.3109a, 500.3135, and 500.3157), section 3104 as amended by 2002 PA 662, section 3107 as amended by 2012 PA 542, section 3109a as amended by 2012 PA 454, and section 3135 as amended by 2012 PA 158, and by adding section 3180.

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~~

~~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 in~~ this state, as a condition of its authority to transact
insurance in this state, ~~shall be~~ **is** a member of the association
and ~~shall be~~ **is** bound by the plan of operation of the association.
~~Each~~ **An** insurer engaged in writing insurance coverages that provide
the security required by section 3103(1) ~~within in~~ this state, as a
condition of its authority to transact insurance in this state,
~~shall be considered~~ **is** 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~~ **For a motor vehicle accident policy issued or renewed**
before 90 days after the effective date of the amendatory act that
added section 3180 and for a motor vehicle accident policy issued
or renewed after 90 days after the effective date of the amendatory
act that added section 3180 for which the coverage level under
section 3109a(2)(c) applies, 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

1 during the period July 1, 2002 to June 30, 2003, \$300,000.00.

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

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

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

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

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

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

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

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

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

20 **(l) For a motor vehicle accident policy issued or renewed**
21 **during the period July 1, 2013 to June 30, 2015, \$530,000.00.**

22 **(m) For a motor vehicle accident policy issued or renewed**
23 **during the period July 1, 2015 to June 30, 2017, \$545,000.00.**

24 **(n) For a motor vehicle accident policy issued or renewed**
25 **during the period July 1, 2017 to June 30, 2019, \$555,000.00.**

26 Beginning July 1, ~~2013, 2019~~, this ~~\$500,000.00~~ **\$555,000.00** amount
27 ~~shall~~ **must** be increased biennially on July 1 of each odd-numbered
28 year, for policies issued or renewed before July 1 of the following
29 odd-numbered year, by the lesser of 6% or the ~~consumer price index,~~

Consumer Price Index, and rounded to the nearest \$5,000.00. ~~This~~
The association shall calculate the biennial adjustment ~~shall be~~
~~calculated by the association by~~ January 1 of the year of its July
 1 effective date.

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

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

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

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

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

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

(b) Establish procedures by which members ~~shall~~ **must** promptly
 report to the association each claim that, on the basis of the

injuries or damages sustained, may reasonably be anticipated to involve the association if the member is ultimately held legally liable for the injuries or damages. Solely for the purpose of reporting claims, the member shall in all instances consider itself legally liable for the injuries or damages. The member shall also advise the association of subsequent developments likely to materially affect the interest of the association in the claim.

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

(d) In a manner provided for in the plan of operation, calculate and charge to members of the association a total premium sufficient to cover the expected losses and expenses of the association that the association will likely incur during the period for which the premium is applicable. The **total** premium ~~shall~~ **must** include an amount to cover incurred but not reported losses for the period and ~~may~~ **must** be adjusted for any excess or deficient premiums from previous periods. Excesses or deficiencies from previous periods ~~may~~ **must either** be fully adjusted in a single period or ~~may~~ be adjusted over several periods in a manner provided for in the plan of operation. Each member ~~shall~~ **must** be charged an amount equal to that member's total written car years of insurance providing the security required by section 3101(1) or 3103(1), or both, written in this state during the period to which the premium applies, **with the total written car years of insurance** multiplied by the **applicable** average premium per car. The average premium per car ~~shall be~~ **is** the total premium, ~~calculated as adjusted for any~~

1 **excesses or deficiencies**, divided by the total written car years of
 2 insurance providing the security required by section 3101(1) or
 3 3103(1), **or both**, written in this state of all members during the
 4 period to which the premium applies, **excluding cars insured under a**
 5 **policy with a coverage limit under section 3109a(2)(a) or (b)**
 6 **except for any portion of total premium that is an adjustment for a**
 7 **deficiency in a previous period. A member may not be charged a**
 8 **premium for a car insured under a policy with a coverage limit**
 9 **under section 3109a(2)(a) or (b) other than for the portion of the**
 10 **total premium attributable to an adjustment for a deficiency in a**
 11 **previous period. A member shall** ~~must~~ **be charged a premium for a**
 12 **historic vehicle that is insured with the member of 20% of the**
 13 **premium charged for a car insured with the member. As used in this**
 14 **subdivision:**

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

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

20 (e) Require and accept the payment of premiums from members of
 21 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 after
 24 the premium charge.

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

27 (f) Receive and distribute all ~~sums~~ **money** required by the
 28 operation of the association.

29 (g) Establish procedures for reviewing claims procedures and

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

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

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

17 (b) Reinsure all or any portion of its potential liability
18 with reinsurers licensed to transact insurance in this state or
19 approved by the ~~commissioner~~**director of the department**.

20 (c) Provide for appropriate housing, equipment, and personnel
21 as ~~may be~~ necessary to assure the efficient operation of the
22 association.

23 (d) Pursuant to the plan of operation, adopt reasonable rules
24 for the administration of the association, enforce those rules, and
25 delegate authority, as the board considers necessary to assure the
26 proper administration and operation of the association consistent
27 with the plan of operation.

28 (e) Contract for goods and services, including independent
29 claims management, actuarial, investment, and legal services, from

1 others ~~within~~**in** or ~~without~~**outside of** this state to assure the
 2 efficient operation of the association.

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

5 (g) Perform other acts not specifically enumerated in this
 6 section that are necessary or proper to accomplish the purposes of
 7 the association and that are not inconsistent with this section or
 8 the plan of operation.

9 (9) A board of directors is created ~~, hereinafter referred to~~
 10 ~~as the board, which shall be responsible for the operation of~~ **and**
 11 **shall operate** the association consistent with the plan of operation
 12 and this section.

13 (10) The plan of operation ~~shall~~**must** provide for all of the
 14 following:

15 (a) The establishment of necessary facilities.

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

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

19 (d) Procedures governing the actual payment of premiums to the
 20 association.

21 (e) Reimbursement of each member of the board by the
 22 association for actual and necessary expenses incurred on
 23 association business.

24 (f) The investment policy of the association.

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

27 (11) ~~Each~~**The** board ~~shall~~**must** include members that would
 28 contribute a total of not less than 40% of the total premium
 29 calculated ~~pursuant to~~**under** subsection (7) (d). Each ~~director shall~~

~~be~~ **board member is** entitled to 1 vote. The initial term of office of a ~~director shall be~~ **board member is** 2 years.

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

(13) The board ~~shall must~~ consist of 5 ~~directors,~~ **board members** and the ~~commissioner shall be~~ **director of the department, who is** an ex officio member of the board without vote.

(14) ~~Each director~~ **The director of the department** shall be appointed by the ~~commissioner and~~ **appoint the board members. A board member** shall serve until ~~that member's~~ **his or her** successor is selected and qualified. The **board shall elect the** chairperson of the board. ~~shall be elected by the board. A~~ **The director of the department shall fill any** vacancy on the board ~~shall be filled by the commissioner consistent with~~ **as provided in** the plan of operation.

(15) ~~After the board is appointed, the~~ **The** board shall meet as often as the chairperson, the ~~commissioner,~~ **director of the department,** or the plan of operation ~~shall require,~~ **requires,** or at the request of any 3 ~~members of the board.~~ **board members.** The chairperson ~~shall retain the right to~~ **may** vote on all issues. Four ~~members of the board~~ **board members** constitute a quorum.

(16) ~~An~~ **The board shall furnish to each member an** annual report of the operations of the association in a form and detail as

1 ~~may be determined by the board. shall be furnished to each member.~~

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

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

24 ~~(17) (19) The proposed plan of operation or~~ **Any** amendments to
25 the plan of operation **of the association** are subject to majority
26 approval by the board, ~~ratified~~ **ratification** by a majority of the
27 membership **of the association** having a vote, with voting rights
28 being apportioned according to the premiums charged in subsection
29 (7) (d), and ~~are subject to approval by the commissioner.~~ **director of**

1 the department.

2 (18) ~~(20) Upon approval by the commissioner and ratification~~
 3 ~~by the members of the plan submitted, or upon the promulgation of a~~
 4 ~~plan by the commissioner, each~~ **An** insurer authorized to write
 5 insurance providing the security required by section 3101(1) in
 6 this state, as provided in this section, is bound by and shall
 7 formally subscribe to and participate in the plan ~~approved of~~
 8 **operation** as a condition of maintaining its authority to transact
 9 insurance in this state.

10 (19) ~~(21)~~ The association is subject to all the reporting,
 11 loss reserve, and investment requirements of the ~~commissioner~~
 12 **director of the department** to the same extent as ~~would~~ **is** a member
 13 of the association.

14 (20) ~~(22)~~ Premiums charged members by the association ~~shall~~
 15 **must** be recognized in the rate-making procedures for insurance
 16 rates in the same manner that expenses and premium taxes are
 17 recognized. **If a member of the association passes on any portion of**
 18 **the premium payable under this section to an insured, the amount**
 19 **passed on must equal the portion of the premium payable by the**
 20 **member under this section attributable to the car or historic**
 21 **vehicle insured, including any adjustments for excesses or**
 22 **deficiencies from a previous period.**

23 (21) ~~(23)~~ The ~~commissioner~~ **director of the department** or an
 24 authorized representative of the ~~commissioner~~ **director of the**
 25 **department** may visit the association at any time and examine any
 26 and all **of** the association's affairs.

27 (22) ~~(24)~~ The association does not have liability for losses
 28 occurring before July 1, 1978. **After 90 days after the effective**
 29 **date of the amendatory act that added section 3180, the association**

1 does not have liability for a loss under a motor vehicle accident
 2 policy for which a coverage limit under section 3109a(2)(a) or (b)
 3 applies.

4 (23) ~~(25)~~ As used in this section:

5 (a) "Association" means the catastrophic claims association
 6 created in subsection (1).

7 (b) "Board" means the board of directors of the association
 8 created in subsection (9).

9 (c) "Car" includes a motorcycle but does not include a
 10 historic vehicle.

11 (d) ~~(a)~~ "Consumer price index" **Price Index** means the
 12 percentage of change in the ~~consumer price index~~ **Consumer Price**
 13 **Index** for all urban consumers in the United States city average for
 14 all items for the 24 months ~~prior to~~ **before** October 1 of the year
 15 ~~prior to~~ **before** the July 1 effective date of the biennial
 16 adjustment under subsection ~~(2)(k)~~ **(2)(n)** as reported by the United
 17 States ~~department of labor, bureau of labor statistics,~~ **Department**
 18 **of Labor, Bureau of Labor Statistics**, and as certified by the
 19 ~~commissioner.~~ **director of the department.**

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

23 (f) ~~(b)~~ "Motor vehicle accident policy" means a policy
 24 providing the coverages required under section 3101(1).

25 (g) ~~(c)~~ "Ultimate loss" means the actual loss amounts that a
 26 member is obligated to pay and that are paid or payable by the
 27 member, and do not include claim expenses. An ultimate loss is
 28 incurred by the association on the date that the loss occurs.

29 Sec. 3107. (1) Except as **otherwise** provided in ~~subsection (2),~~

1 **this chapter**, personal protection insurance benefits are payable
 2 for the following:

3 (a) Allowable expenses consisting of all reasonable charges
 4 incurred, **up to any applicable coverage limit under section 3109a**,
 5 for reasonably necessary products, services and accommodations for
 6 an injured person's care, recovery, or rehabilitation. Allowable
 7 expenses within personal protection insurance coverage ~~shall-do~~ not
 8 include ~~either-any~~ of the following:

9 (i) Charges for a hospital room in excess of a reasonable and
 10 customary charge for semiprivate accommodations, ~~except-if-unless~~
 11 the injured person requires special or intensive care.

12 (ii) Funeral and burial expenses in excess of the amount set
 13 forth in the policy which ~~shall-must~~ not be less than \$1,750.00 or
 14 more than \$5,000.00.

15 (b) Work loss consisting of loss of income from work an
 16 injured person would have performed during the first 3 years after
 17 the date of the accident if he or she had not been injured. Work
 18 loss does not include any loss after the date on which the injured
 19 person dies. Because the benefits received from personal protection
 20 insurance for loss of income are not taxable income, the benefits
 21 payable for ~~such-loss~~ of income ~~shall-must~~ be reduced 15% unless
 22 the claimant presents to the insurer in support of his or her claim
 23 reasonable proof of a lower value of the income tax advantage in
 24 his or her case, in which case the lower value ~~shall-apply-must be~~
 25 **applied**. For the period beginning October 1, 2012 through September
 26 30, 2013, the benefits payable for work loss sustained in a single
 27 30-day period and the income earned by an injured person for work
 28 during the same period together ~~shall-must~~ not exceed \$5,189.00,
 29 which maximum ~~shall-apply-must be applied~~ pro rata to any lesser

1 period of work loss. Beginning October 1, 2013, the maximum ~~shall~~
 2 **must** be adjusted annually to reflect changes in the cost of living
 3 under rules prescribed by the ~~commissioner~~**director**, but any change
 4 in the maximum ~~shall apply~~ **applies** only to benefits arising out of
 5 ~~accidents occurring subsequent to~~ **an accident that occurs after** the
 6 date of change in the maximum.

7 (c) Expenses not exceeding \$20.00 per day, reasonably incurred
 8 in obtaining ordinary and necessary services in lieu of those that,
 9 if he or she had not been injured, an injured person would have
 10 performed during the first 3 years after the date of the accident,
 11 not for income but for the benefit of himself or herself or of his
 12 or her dependent.

13 (2) Both of the following apply to personal protection
 14 insurance benefits payable under subsection (1):

15 (a) A person who is 60 years of age or older and in the event
 16 of an accidental bodily injury would not be eligible to receive
 17 work loss benefits under subsection (1)(b) may waive coverage for
 18 work loss benefits by signing a waiver on a form provided by the
 19 insurer. An insurer shall offer a reduced premium rate to a person
 20 who waives coverage under this ~~subsection~~**subdivision** for work loss
 21 benefits. Waiver of coverage for work loss benefits applies only to
 22 work loss benefits payable to the person or persons who have signed
 23 the waiver form.

24 (b) An insurer ~~shall~~**is** not ~~be~~ required to provide coverage
 25 for the medical use of marihuana or for expenses related to the
 26 medical use of marihuana.

27 Sec. 3109a. **(1)** An insurer providing personal protection
 28 insurance benefits under this chapter may offer, at appropriately
 29 reduced premium rates, deductibles and exclusions reasonably

1 related to other health and accident coverage on the insured. Any
2 deductibles and exclusions offered under this section are subject
3 to prior approval by the ~~commissioner~~**director** and ~~shall~~**must** apply
4 only to benefits payable to the **insured** person named in the policy,
5 the spouse of the insured **person**, and any relative of either
6 domiciled in the same household.

7 (2) For an insurance policy that provides personal protection
8 insurance benefits and is issued or renewed after 90 days after the
9 effective date of the amendatory act that added section 3180, the
10 insured person named in the policy shall, on a form approved by the
11 director, select 1 of the following coverage levels for the
12 personal protection insurance benefits:

13 (a) A limit of \$250,000.00 per individual per loss occurrence
14 on personal protection insurance benefits under this chapter.

15 (b) A limit of \$500,000.00 per individual per loss occurrence
16 on personal protection insurance benefits under this chapter.

17 (c) No maximum limit per individual per loss occurrence on
18 personal protection insurance benefits under this chapter.

19 (3) All of the following apply to subsection (2):

20 (a) If an insured person named in the policy does not select 1
21 of the coverage levels on a form approved by the director under
22 subsection (2), no maximum limit on personal protection insurance
23 benefits under this chapter applies under the policy. However, if
24 an insured person named in the policy has previously selected as
25 provided in this subdivision 1 of the coverage levels under
26 subsection (2) and does not, before renewal of the policy, select a
27 different coverage level in writing on a form approved by the
28 director, the coverage level applicable before the renewal applies
29 under the policy.

1 (b) If the insured person named in the policy selects a
2 coverage limit under subsection (2) (a) or (b), the coverage limit
3 under subsection (2) (a) or (b) applies to personal protection
4 insurance benefits payable under the policy to the insured person,
5 the insured person's spouse, a relative of either domiciled in the
6 same household, and any other person with a right to claim personal
7 protection insurance benefits under the policy.

8 (c) If the insured person named in the policy does not select
9 a coverage limit under subsection (2) (a) or (b) for a policy, no
10 maximum limit applies to personal protection insurance benefits
11 payable under the policy to the insured person, the insured
12 person's spouse, a relative of either domiciled in the same
13 household, or any other resident of this state with a right to
14 claim personal protection benefits under the policy.

15 (d) If the coverage limit under subsection (2) (a) or (b)
16 applies to a person claiming personal protection insurance
17 benefits, the coverage limit applies on a per occurrence per loss
18 basis notwithstanding the number of policies applicable to the
19 occurrence or the loss.

20 (4) The form required under subsection (2) must do all of the
21 following:

22 (a) State, in a conspicuous manner, the benefits and risks
23 associated with each coverage option available under subsection
24 (2) .

25 (b) Provide a line for the insured person to sign,
26 acknowledging that he or she has read the form and understands the
27 options available to him or her.

28 (c) Allow the insured person to make the selection of coverage
29 level under subsection (2) .

1 (5) For purposes of this section, the date that a policy is
2 issued or renewed is the effective date of both the personal
3 protection insurance coverage under the policy and the coverage
4 level applicable under this section.

5 Sec. 3135. (1) A person remains subject to tort liability for
6 noneconomic loss caused by his or her ownership, maintenance, or
7 use of a motor vehicle only if the injured person has suffered
8 death, serious impairment of body function, or permanent serious
9 disfigurement.

10 (2) For a cause of action for damages pursuant to subsection
11 (1), ~~filed on or after July 26, 1996,~~ all of the following apply:

12 (a) The issues of whether the injured person has suffered
13 serious impairment of body function or permanent serious
14 disfigurement are questions of law for the court if the court finds
15 either of the following:

16 (i) There is no factual dispute concerning the nature and
17 extent of the person's injuries.

18 (ii) There is a factual dispute concerning the nature and
19 extent of the person's injuries, but the dispute is not material to
20 the determination whether the person has suffered a serious
21 impairment of body function or permanent serious disfigurement.
22 However, for a closed-head injury, a question of fact for the jury
23 is created if a licensed allopathic or osteopathic physician who
24 regularly diagnoses or treats closed-head injuries testifies under
25 oath that there may be a serious neurological injury.

26 (b) Damages ~~shall~~**must** be assessed on the basis of comparative
27 fault, except that damages ~~shall~~**must** not be assessed in favor of a
28 party who is more than 50% at fault.

29 (c) Damages ~~shall~~**must** not be assessed in favor of a party who

1 was operating his or her own vehicle at the time the injury
2 occurred and did not have in effect for that motor vehicle the
3 security required by section 3101 at the time the injury occurred.

4 (3) Notwithstanding any other provision of law, tort liability
5 arising from the ownership, maintenance, or use within this state
6 of a motor vehicle with respect to which the security required by
7 section 3101 was in effect is abolished except as to:

8 (a) Intentionally caused harm to persons or property. Even
9 though a person knows that harm to persons or property is
10 substantially certain to be caused by his or her act or omission,
11 the person does not cause or suffer that harm intentionally if he
12 or she acts or refrains from acting for the purpose of averting
13 injury to any person, including himself or herself, or for the
14 purpose of averting damage to tangible property.

15 (b) Damages for noneconomic loss as provided and limited in
16 subsections (1) and (2).

17 (c) Damages for allowable expenses, work loss, and survivor's
18 loss ~~as defined in~~ **under** sections 3107 to 3110 in excess of the
19 daily, monthly, and 3-year limitations contained in those sections
20 **or in excess of any applicable limit under section 3109a(2)**. The
21 party liable for damages is entitled to an exemption reducing his
22 or her liability by the amount of taxes that would have been
23 payable on account of income the injured person would have received
24 if he or she had not been injured.

25 (d) Damages for economic loss by a nonresident in excess of
26 the personal protection insurance benefits provided under section
27 3163(4). Damages under this subdivision are not recoverable to the
28 extent that benefits covering the same loss are available from
29 other sources, regardless of the nature or number of benefit

1 sources available and regardless of the nature or form of the
2 benefits.

3 (e) Damages up to \$1,000.00 to a motor vehicle, to the extent
4 that the damages are not covered by insurance. An action for
5 damages under this subdivision ~~shall~~**must** be conducted as provided
6 in subsection (4).

7 (4) All of the following apply to an action for damages under
8 subsection (3)(e):

9 (a) Damages ~~shall~~**must** be assessed on the basis of comparative
10 fault, except that damages ~~shall~~**must** not be assessed in favor of a
11 party who is more than 50% at fault.

12 (b) Liability is not a component of residual liability, as
13 prescribed in section 3131, for which maintenance of security is
14 required by this act.

15 (c) The action ~~shall~~**must** be commenced, whenever legally
16 possible, in the small claims division of the district court or the
17 municipal court. If the defendant or plaintiff removes the action
18 to a higher court and does not prevail, the judge may assess costs.

19 (d) A decision of the court is not res judicata in any
20 proceeding to determine any other liability arising from the same
21 circumstances that gave rise to the action.

22 (e) Damages ~~shall~~**must** not be assessed if the damaged motor
23 vehicle was being operated at the time of the damage without the
24 security required by section 3101.

25 (5) As used in this section, "serious impairment of body
26 function" means an objectively manifested impairment of an
27 important body function that affects the person's general ability
28 to lead his or her normal life.

29 Sec. 3157. (1) ~~A~~**Subject to subsections (2) and (3), a**

1 physician, hospital, clinic, or other person or institution
2 lawfully rendering treatment, **products, services, or accommodations**
3 to an injured person for an accidental bodily injury covered by
4 personal protection insurance, and a person or institution
5 providing rehabilitative occupational training **to the injured**
6 **person** following the injury, may charge a reasonable amount for the
7 **treatment, training,** products, services, and accommodations
8 rendered. The charge ~~shall~~**must** not exceed the amount the person or
9 institution customarily charges for like **treatment, training,**
10 products, services, and accommodations in cases ~~not involving that~~
11 **do not involve personal protection** insurance.

12 (2) A physician, hospital, clinic, or other person or
13 institution that renders a treatment, training, product, service,
14 or accommodation to an injured person for an accidental bodily
15 injury is not eligible for payment or reimbursement under this
16 chapter of more than 100% of the amount payable for the treatment,
17 training, product, service, or accommodation under R 418.10101 to R
18 418.101503 of the Michigan Administrative Code or schedules of
19 maximum fees for worker's compensation developed under those rules,
20 in effect on December 31, 2018. The director shall review any
21 changes to R 418.10101 to R 418.101503 of the Michigan
22 Administrative Code or schedules of maximum fees for worker's
23 compensation developed under those rules, in effect on December 31,
24 2018. If the director determines that the changes are reasonable
25 and appropriate for purposes of assuring affordable automobile
26 insurance in this state, the changes apply for purposes of this
27 subsection and the director shall issue an order to that effect.

28 (3) If R 418.10101 to R 418.101503 of the Michigan
29 Administrative Code or schedules of maximum fees for worker's

1 compensation developed under those rules, in effect on December 31,
2 2018, including any changes applicable under subsection (2), do not
3 provide an amount payable for treatment, training, product,
4 service, or accommodation rendered to an injured person for
5 accidental bodily injury covered by personal protection insurance
6 or rehabilitative occupational training to the injured person
7 following the injury, the physician, hospital, clinic, or other
8 person or institution that renders the treatment, product, service,
9 or accommodation is not eligible for payment or reimbursement under
10 this chapter of more than the average amount accepted by the
11 physician, hospital, clinic, or other person or institution as
12 payment or reimbursement in full for the treatment, training,
13 product, service, or accommodation during the preceding calendar
14 year in cases that do not involve personal protection insurance.

15 Sec. 3180. (1) By 90 days after the effective date of the
16 amendatory act that added this section, an insurer that offers
17 automobile insurance in this state shall file premium rates for
18 personal protection insurance coverage for automobile insurance
19 policies effective after 90 days after the effective date of the
20 amendatory act that added this section and before 1 year after 90
21 days after the effective date of the amendatory act that added this
22 section. The premium rates filed, and any subsequent premium rates
23 filed by the insurer for personal protection insurance coverage for
24 automobile insurance policies effective before 5 years after 90
25 days after the effective date of the amendatory act that added this
26 section, must reflect savings expected from the amendments to this
27 chapter made by the amendatory act that added this section,
28 consistent with the requirements of sections 2109 to 2111a for
29 policies to which chapter 21 applies, section 2403 for policies to

1 which chapter 24 applies, and section 2603 for policies to which
2 chapter 26 applies.

3 (2) If premium rates filed by an insurer under subsection (1)
4 for personal protection insurance coverage do not result in an
5 average 40% or greater reduction per vehicle for policies subject
6 to the coverage limits under section 3109a(2)(a), an average 20% or
7 greater reduction per vehicle for policies subject to the coverage
8 limits under section 3109a(2)(b), and an average 10% or greater
9 reduction per vehicle for policies subject to the coverage level
10 under section 3109a(2)(c) from the premium rates for personal
11 protection insurance coverage that were in effect for the insurer
12 on October 1 of the year preceding the year in which the amendatory
13 act that added this section takes effect, the insurer shall include
14 with the filing both of the following:

15 (a) Premium rates for personal protection insurance coverage
16 as near as practicable to those reductions recognizing the
17 justifications described in this subsection.

18 (b) A detailed explanation of the reasons for the insurer's
19 failure to achieve the required reductions and a demonstration
20 using generally accepted and reasonable actuarial techniques that
21 the required reductions are not justified because of requirements
22 under subsection (1) or 1 or more of the following:

23 (i) Expected losses of the insurer from the provision of
24 automobile insurance.

25 (ii) Inflation, as shown by the Consumer Price Index calculated
26 and published by the United States Department of Labor, Bureau of
27 Labor Statistics.

28 (iii) A change in an assessment imposed on an insurer under
29 section 3104 or 3330.

1 (3) The director shall review premium rates filed by an
2 insurer under subsection (1) for compliance with subsections (1)
3 and (2). The director shall disapprove a filing that contains a
4 premium rate if after review the director determines both of the
5 following:

6 (a) That the premium rate does not result in the reductions
7 required by subsections (1) and (2).

8 (b) That the failure to achieve the reductions is not
9 justified using generally accepted and reasonable actuarial
10 techniques because of 1 or more of the factors listed in subsection
11 (2) (b).

12 (4) If the director disapproves a premium rate filing under
13 subsection (3), the director shall do both of the following:

14 (a) Determine what premium rate reductions the insurer could
15 achieve that are as near as practicable to the average per vehicle
16 reductions required under subsections (1) and (2) recognizing the
17 factors listed in subsection (2) (b).

18 (b) Provide the insurer with a written explanation of the
19 reasons for the disapproval and the director's determination under
20 subdivision (a).

21 (5) If the director disapproves a premium rate filing under
22 subsection (3), the insurer shall submit a revised premium rate
23 filing to the director within 15 days of the disapproval that
24 complies with the director's determination under subsection (4) (a).
25 The premium rate filing is subject to review in the same manner as
26 an original premium rate filing under subsection (3).

27 (6) A premium rate filing under this section that is not
28 disapproved by the director within 30 days of its submission is
29 considered approved. However, the director may extend the time

1 under this subsection by an additional 30 days by giving the
2 insurer written notice before the initial 30-day period expires of
3 the extended time period and the reasons for the extension.

4 (7) After 90 days after the effective date of the amendatory
5 act that added this section and before 5 years after 90 days after
6 the effective date of the amendatory act that added this section,
7 an insurer shall not issue or renew an automobile insurance policy
8 in this state unless the premium rates filed by the insurer for
9 personal protection insurance coverage are approved under this
10 section.

11 (8) For purposes of calculating a personal protection
12 insurance premium or premium rate under this section, the premium
13 includes the catastrophic claims assessment imposed under section
14 3104.

15 Enacting section 1. This amendatory act does not take effect
16 unless, as provided in section 34 of article IV of the state
17 constitution of 1963, it is approved by a majority of the electors
18 of this state voting at the November 2020 regular election, held
19 under section 641(1)(a) of the Michigan election law, 1954 PA 116,
20 MCL 168.641.