

HOUSE BILL NO. 4211

February 19, 2019, Introduced by Rep. Yaroach 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, and 3109a (MCL 500.3104, 500.3107,
and 500.3109a), section 3104 as amended by 2002 PA 662, section
3107 as amended by 2012 PA 542, and section 3109a as amended by
2012 PA 454.

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~~



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~~ **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~~ **is** considered **to be** a member of the association, but only for purposes of premiums under subsection ~~(7)(d)~~. **(8)(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~~ **Subject to subsection (3), 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 during the period July 1, 2004 to June 30, 2005, \$350,000.00.

(e) For a motor vehicle accident policy issued or renewed



1 during the period July 1, 2005 to June 30, 2006, \$375,000.00.

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

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

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

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

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

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

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

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

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

20 Beginning July 1, ~~2013, 2019~~, this ~~\$500,000.00~~ **\$555,000.00**
21 amount ~~shall~~ **must** be increased biennially on July 1 of each odd-
22 numbered year, for policies issued or renewed before July 1 of the
23 following odd-numbered year, by the lesser of 6% or the ~~consumer~~
24 ~~price index, Consumer Price Index~~, and rounded to the nearest
25 \$5,000.00. ~~This~~ **The association shall calculate this** biennial
26 adjustment ~~shall be calculated by the association by~~ January 1 of
27 the year of its July 1 effective date.

28 **(3) The association does not have liability for any amount of**
29 **ultimate loss that exceeds the maximum limit under section**



1 **3109a(2)(a), if that limit is applicable.**

2 (4) ~~(3)~~—An insurer may withdraw from the association only ~~upon~~
3 on ceasing to write insurance that provides the security required
4 by section 3101(1) in this state.

5 (5) ~~(4)~~—An insurer whose membership in the association has
6 been terminated by withdrawal ~~shall continue~~ **continues** to be bound
7 by the plan of operation, and ~~upon~~ **on** withdrawal, all unpaid
8 premiums that have been charged to the withdrawing member are
9 payable as of the effective date of the withdrawal.

10 (6) ~~(5)~~—An unsatisfied net liability to the association of an
11 insolvent member ~~shall~~ **must** be assumed by and apportioned among the
12 remaining members of the association as provided in the plan of
13 operation. The association has all rights allowed by law on behalf
14 of the remaining members against the estate or funds of the
15 insolvent member for ~~sums~~ **money** due the association.

16 (7) ~~(6)~~—If a member has been merged or consolidated into
17 another insurer or another insurer has reinsured a member's entire
18 business that provides the security required by section 3101(1) in
19 this state, the member and successors in interest of the member
20 remain liable for the member's obligations.

21 (8) ~~(7)~~—The association shall do all of the following on
22 behalf of the members of the association:

23 (a) Assume 100% of all liability as provided in subsection
24 (2).

25 (b) Establish procedures by which members ~~shall~~ **must** promptly
26 report to the association each claim that, on the basis of the
27 injuries or damages sustained, may reasonably be anticipated to
28 involve the association if the member is ultimately held legally
29 liable for the injuries or damages. Solely for the purpose of



1 reporting claims, the member shall in all instances consider itself
2 legally liable for the injuries or damages. The member shall also
3 advise the association of subsequent developments likely to
4 materially affect the interest of the association in the claim.

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

10 (d) In a manner provided for in the plan of operation,
11 calculate and charge to members of the association a total premium
12 sufficient to cover the expected losses and expenses of the
13 association that the association will likely incur during the
14 period for which the premium is applicable. The **total** premium ~~shall~~
15 **must** include an amount to cover incurred but not reported losses
16 for the period and may be adjusted for any excess or deficient
17 premiums from previous periods. Excesses or deficiencies from
18 previous periods may be fully adjusted in a single period or may be
19 adjusted over several periods in a manner provided for in the plan
20 of operation. Each member ~~shall~~**must** be charged an amount equal to
21 that member's total written car years of insurance providing the
22 security required by section 3101(1) or 3103(1), or both, written
23 in this state during the period to which the premium applies, **with**
24 **the total car years of insurance** multiplied by the **applicable**
25 average premium per car. The average premium per car ~~shall be~~**is**
26 the total premium ~~calculated~~ divided by the total written car years
27 of insurance providing the security required by section 3101(1) or
28 3103(1) written in this state of all members during the period to
29 which the premium applies. **The premium charged to a member, the**



1 total car years of insurance, and the applicable average premium
2 per car must be adjusted to provide for policies issued to which
3 the maximum limit under section 3109a(2) (a) applies. A member shall
4 must be charged a premium for a historic vehicle that is insured
5 with the member of 20% of the premium charged for a car insured
6 with the member. As used in this subdivision:

7 (i) "Car" includes a motorcycle but does not include a historic
8 vehicle.

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

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

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

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

19 (f) Receive and distribute all ~~sums~~ money required by the
20 operation of the association.

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



1 (9) ~~(8)~~—In addition to other powers granted to it by this
2 section, the association may do all of the following:

3 (a) Sue and be sued in the name of the association. A judgment
4 against the association ~~shall~~**does** not create any direct liability
5 against the individual members of the association. The association
6 may provide for the indemnification of its members, members of the
7 board of directors of the association, and officers, employees, and
8 other persons lawfully acting on behalf of the association.

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

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

15 (d) Pursuant to the plan of operation, adopt reasonable rules
16 for the administration of the association, enforce those rules, and
17 delegate authority, as the board considers necessary to assure the
18 proper administration and operation of the association consistent
19 with the plan of operation.

20 (e) Contract for goods and services, including independent
21 claims management, actuarial, investment, and legal services, from
22 others ~~within~~**in** or ~~without~~**outside of** this state to assure the
23 efficient operation of the association.

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

26 (g) Perform other acts not specifically enumerated in this
27 section that are necessary or proper to accomplish the purposes of
28 the association and that are not inconsistent with this section or
29 the plan of operation.



1 (10) ~~(9)~~ A board of directors is created ~~, hereinafter~~
 2 ~~referred to as the board, which shall be responsible for the~~
 3 ~~operation of~~ **and shall operate** the association consistent with the
 4 plan of operation and this section.

5 (11) ~~(10)~~ The plan of operation ~~shall~~ **must** provide for all of
 6 the following:

7 (a) The establishment of necessary facilities.

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

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

11 (d) Procedures governing the actual payment of premiums to the
 12 association.

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

16 (f) The investment policy of the association.

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

19 (12) ~~(11)~~ ~~Each~~ **The** board ~~shall~~ **must** include members that would
 20 contribute a total of not less than 40% of the total premium
 21 calculated pursuant to subsection ~~(7)(d)~~ **(8)(d)**. Each director
 22 ~~shall be~~ **is** entitled to 1 vote. The initial term of office of a
 23 director ~~shall be~~ **is** 2 years.

24 (13) ~~(12)~~ As part of the plan of operation, the board shall
 25 adopt rules providing for the composition ~~and term of successor~~
 26 ~~boards to the initial board~~ **and the terms of board members,**
 27 consistent with the membership composition requirements in
 28 subsections ~~(11) and (13)~~ **(12) and (14)**. Terms of the directors
 29 ~~shall~~ **must** be staggered so that the terms of all the directors do



1 not expire at the same time and so that a director does not serve a
2 term of more than 4 years.

3 (14) ~~(13)~~ The board ~~shall~~ **must** consist of 5 directors ~~, and~~
4 the ~~commissioner~~ **director of the department, who** shall ~~be~~ **serve as**
5 an ex officio member of the board without vote.

6 (15) ~~(14)~~ Each ~~director~~ **The director of the department** shall
7 ~~be appointed by the commissioner and~~ **appoint the directors. A**
8 **director** shall serve until ~~that member's~~ **his or her** successor is
9 selected and qualified. The **board shall elect the** chairperson of
10 the board. ~~shall be elected by the board. A~~ **The director of the**
11 **department shall fill any** vacancy on the board ~~shall be filled by~~
12 ~~the commissioner consistent with~~ **as provided in** the plan of
13 operation.

14 (16) ~~(15)~~ After the board is appointed, ~~the~~ **The** board shall
15 meet as often as the chairperson, the ~~commissioner,~~ **director of the**
16 **department,** or the plan of operation ~~shall require,~~ **requires,** or at
17 the request of any 3 members of the board. The chairperson ~~shall~~
18 ~~retain the right to~~ **may** vote on all issues. Four members of the
19 board constitute a quorum.

20 (17) ~~(16)~~ An ~~The~~ **board shall furnish to each member an** annual
21 report of the operations of the association in a form and detail as
22 ~~may be determined by the board. shall be furnished to each member.~~

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



~~then the commissioner, after consultation with the board, shall formulate and place into effect a plan consistent with this section.~~

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

~~(18) (19) The proposed plan of operation or~~ **Any** amendments to the plan of operation **of the association** are subject to majority approval by the board, ~~ratified~~ **ratification** by a majority of the membership having a vote, with voting rights being apportioned according to the premiums charged in subsection ~~(7) (d)~~ **(8) (d)**, and ~~are subject to approval by the commissioner.~~ **director of the department.**

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



1 insurance in this state.

2 (20) ~~(21)~~ The association is subject to all the reporting,
3 loss reserve, and investment requirements of the ~~commissioner~~
4 **director of the department** to the same extent as ~~would a member~~ **are**
5 **the members** of the association.

6 (21) ~~(22)~~ Premiums charged members by the association ~~shall~~
7 **must** be recognized in the rate-making procedures for insurance
8 rates in the same manner that expenses and premium taxes are
9 recognized. **However, for a policy to which the maximum limit under**
10 **section 3109a(2) (a) applies, the rates must not result in a charge**
11 **for the association other than a charge for a deficiency from a**
12 **previous period as described in subsection (8) (d) .**

13 (22) ~~(23)~~ The ~~commissioner~~ **director of the department** or an
14 authorized representative of the ~~commissioner~~ **director of the**
15 **department** may visit the association at any time and examine any
16 and all **of** the association's affairs.

17 (23) ~~(24)~~ The association does not have liability for losses
18 occurring before July 1, 1978.

19 (24) ~~(25)~~ As used in this section:

20 (a) "Association" means the catastrophic claims association
21 created in subsection (1) .

22 (b) "Board" means the board of directors of the association
23 created in subsection (10) .

24 (c) ~~(a)~~ "Consumer price index" **Price Index** means the
25 percentage of change in the ~~consumer price index~~ **Consumer Price**
26 **Index** for all urban consumers in the United States city average for
27 all items for the 24 months ~~prior to~~ **before** October 1 of the year
28 ~~prior to~~ **before** the July 1 effective date of the biennial
29 adjustment under subsection ~~(2) (k)~~ **(2) (n)** as reported by the United



1 ~~States department of labor, bureau of labor statistics,~~ **Department**
 2 **of Labor, Bureau of Labor Statistics,** and as certified by the
 3 ~~commissioner.~~ **director of the department.**

4 (d) ~~(b)~~—"Motor vehicle accident policy" means a policy
 5 providing the coverages required under section 3101(1).

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

10 Sec. 3107. (1) Except as **otherwise** provided in ~~subsection (2),~~
 11 **this section,** personal protection insurance benefits are payable
 12 for the following:

13 (a) Allowable expenses consisting of all reasonable charges
 14 incurred, **up to the maximum limit selected under section**
 15 **3109a(2) (a), if applicable,** for reasonably necessary products,
 16 services, and accommodations for an injured person's care,
 17 recovery, or rehabilitation. Allowable expenses within personal
 18 protection insurance coverage ~~shall do~~ not include either of the
 19 following:

20 (i) Charges for a hospital room in excess of a reasonable and
 21 customary charge for semiprivate accommodations ~~except if unless~~
 22 the injured person requires special or intensive care.

23 (ii) Funeral and burial expenses in excess of the amount set
 24 forth in the policy, which shall not be less than \$1,750.00 or more
 25 than \$5,000.00.

26 (b) Work loss consisting of loss of income from work an
 27 injured person would have performed during the first 3 years after
 28 the date of the accident if he or she had not been injured. Work
 29 loss does not include any loss after the date on which the injured



1 person dies. Because the benefits received from personal protection
 2 insurance for loss of income are not taxable income, the benefits
 3 payable for such loss of income ~~shall~~**must** be reduced 15% unless
 4 the claimant presents to the insurer in support of his or her claim
 5 reasonable proof of a lower value of the income tax advantage in
 6 his or her case, in which case the lower value ~~shall apply.~~**must be**
 7 **applied.** For the period beginning October 1, 2012 through September
 8 30, 2013, the benefits payable for work loss sustained in a single
 9 30-day period and the income earned by an injured person for work
 10 during the same period together ~~shall~~**must** not exceed \$5,189.00,
 11 which maximum ~~shall apply~~**must be applied** pro rata to any lesser
 12 period of work loss. Beginning October 1, 2013, the maximum ~~shall~~
 13 **must** be adjusted annually to reflect changes in the cost of living
 14 under rules prescribed by the ~~commissioner~~**director** but any change
 15 in the maximum ~~shall apply~~**applies** only to benefits arising out of
 16 accidents ~~occurring subsequent to~~**that occur after** the date of
 17 change in the maximum.

18 (c) Expenses not exceeding \$20.00 per day, reasonably incurred
 19 in obtaining ordinary and necessary services in ~~lieu~~**place** of those
 20 that, if he or she had not been injured, an injured person would
 21 have performed during the first 3 years after the date of the
 22 accident, not for income but for the benefit of himself or herself
 23 or of his or her dependent.

24 (2) ~~Both~~**All** of the following apply to personal protection
 25 insurance benefits payable under subsection (1):

26 (a) A person who is 60 years of age or older and in the event
 27 of an accidental bodily injury would not be eligible to receive
 28 work loss benefits under subsection (1)(b) may waive coverage for
 29 work loss benefits by signing a waiver on a form provided by the



insurer. An insurer shall offer a reduced premium rate to a person who waives coverage under this ~~subsection~~**subdivision** for work loss benefits. Waiver of coverage for work loss benefits applies only to work loss benefits payable to the person or persons who have signed the waiver form.

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

Sec. 3109a. **(1)** An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. Any deductibles and exclusions offered under this section are subject to prior approval by the ~~commissioner~~**director** and ~~shall~~**must** apply only to benefits payable to the ~~person~~**individual** named in the policy, the spouse of the insured **individual**, and any relative of either domiciled in the same household.

(2) When an individual applies for or renews an insurance policy that provides benefits under this chapter, the individual shall select 1 of the following levels of maximum personal protection insurance benefits:

(a) A limit equal to the amount applicable to the policy under section 3104(2).

(b) No maximum limit.

(3) A maximum limit selected under subsection (2)(a) applies to allowable expenses as described under section 3107(1)(a). The maximum limit selected applies only to benefits payable because of an accidental bodily injury to the insured named in the policy, the insured's spouse, and any relative of either domiciled in the same



1 household. The maximum limit available because of accidental bodily
2 injury to 1 person arising from 1 motor vehicle accident is
3 determined without regard to the number of policies applicable to
4 the accident.

