

HOUSE BILL No. 4212

February 13, 2003, Introduced by Reps. Caswell, Brandenburg, Nitz and Shaffer 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 unincorporated, nonprofit association to
2 be known as the catastrophic claims association, hereinafter
3 referred to as the association, is created. Each insurer engaged
4 in writing insurance coverages that provide the security required
5 by section 3101(1) within this state, as a condition of its
6 authority to transact insurance in this state, shall be a member
7 of the association and shall be bound by the plan of operation of
8 the association. Each insurer engaged in writing insurance
9 coverages that provide the security required by section 3103(1)
10 within this state, as a condition of its authority to transact

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (k) For a motor vehicle accident policy issued or renewed
7 during the period July 1, 2011 to June 30, 2013, \$500,000.00.
8 Beginning July 1, 2013, this \$500,000.00 amount shall be
9 increased biennially on July 1 of each odd-numbered year, for
10 policies issued or renewed before July 1 of the following
11 odd-numbered year, by the lesser of 6% or the consumer price
12 index, and rounded to the nearest \$5,000.00. This biennial
13 adjustment shall be calculated by the association by January 1 of
14 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 to be bound by the plan
20 of operation, and upon withdrawal, all unpaid premiums that have
21 been charged to the withdrawing member are payable as of the
22 effective date of the withdrawal.

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

1 the insolvent member for sums due the association.

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

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

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

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

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

26 (d) In a manner provided for in the plan of operation,
27 calculate and charge to members of the association ~~a total~~

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

1 ~~historic vehicle.~~

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

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

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

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

12 (f) Receive and distribute all sums required by the operation
 13 of the association.

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

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

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

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

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,
13 and delegate authority, as the board considers necessary to
14 assure the proper administration and operation of the association
15 consistent with the plan of operation.

16 (e) Contract for goods and services, including independent
17 claims management, actuarial, investment, and legal services,
18 from 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
24 of the association and that are not inconsistent with this
25 section or 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 the

1 association consistent with the plan of operation and this
2 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
9 periods.

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

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

15 (f) The investment policy of the association.

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

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

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

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

3 (13) The board shall consist of 5 directors, and the
4 commissioner shall be an ex officio member of the board without
5 vote.

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

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

16 (16) An annual report of the operations of the association in
17 a form and detail as may be determined by the board shall be
18 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
23 for the economical, fair, and nondiscriminatory administration of
24 the 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
3 writing, shall be considered to meet the requirements of this
4 section if it is not disapproved by written order of the
5 commissioner within 30 days after the date of its submission.
6 Before disapproval of all or any part of the proposed plan of
7 operation, the commissioner shall notify the board in what
8 respect the plan of operation fails to meet the requirements and
9 objectives of this section. If the board fails to submit a
10 revised plan of operation that meets the requirements and
11 objectives of this section within the 30-day period, the
12 commissioner shall enter an order accordingly and shall
13 immediately formulate and place into effect a plan consistent
14 with the requirements and objectives of this section.

15 (19) The proposed plan of operation or amendments to the plan
16 of operation are subject to majority approval by the board,
17 ratified by a majority of the membership having a vote, with
18 voting rights being apportioned according to the premiums charged
19 in subsection (7)(d) and are subject to approval by the
20 commissioner.

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

1 this state.

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

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

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

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

13 (25) As used in this section:

14 (a) "Consumer price index" means the percentage of change in
15 the consumer price index for all urban consumers in the United
16 States city average for all items for the 24 months prior to
17 October 1 of the year prior to the July 1 effective date of the
18 biennial adjustment under subsection (2)(k) as reported by the
19 United States department of labor, bureau of labor statistics,
20 and as certified by the commissioner.

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

24 (c) "Motorcycle" means a motorcycle as defined in section
25 3101(2).

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

1 (e) "Private passenger auto" means a motor vehicle as defined
2 in section 3101(2) that is also all of the following:

3 (i) An auto, motor home, customized van, station wagon,
4 sports utility vehicle, pickup, panel truck, or van.

5 (ii) Not owned or registered by a limited liability company,
6 corporation, partnership, or unincorporated association, unless
7 leased for a period that is greater than 30 days to an individual
8 or husband and wife.

9 (iii) Not used as a public or livery conveyance or rented to
10 others without a driver.

11 (iv) Not registered as a historic vehicle.

12 (f) "Type A vehicle" means either of the following:

13 (i) A motor vehicle as defined in section 3101(2) that is
14 also not a private passenger auto.

15 (ii) A historic vehicle.

16 (g) "Type B vehicle" means either of the following:

17 (i) A private passenger auto.

18 (ii) A motorcycle.

19 (h) ~~(e)~~ "Ultimate loss" means the actual loss amounts that
20 a member is obligated to pay and that are paid or payable by the
21 member, and do not include claim expenses. An ultimate loss is
22 incurred by the association on the date that the loss occurs.

23 Enacting section 1. This amendatory act takes effect
24 January 1, 2005.