

# HOUSE BILL No. 4489

April 1, 2003, Introduced by Reps. Sak, Spade, Milosch, Clack, Garfield, Minore, Byrum, Tobocman, O'Neil, Vagnozzi, Rivet, Murphy, Bieda, Gillard, Farrah, Dennis, Gielegem, Woodward, Gleason, Accavitti, Law, Wojno, Condino, Stallworth, Elkins, Meisner, Hunter, Zelenko, Sheltroun, Anderson, Plakas, Kooiman and Brown 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:**

HOUSE BILL No. 4489

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

21 (i) "Car" includes a motorcycle but does not include a  
22 historic vehicle.

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

26 (e) Require and accept the payment of premiums from members  
27 of the association as provided for in the plan of operation. The

1 association shall do either of the following:

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

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

6 (f) Receive and distribute all sums required by the operation  
7 of the association.

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

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

19 (a) Sue and be sued in the name of the association. A  
20 judgment against the association shall not create any direct  
21 liability against the individual members of the association. The  
22 association may provide for the indemnification of its members,  
23 members of the board of directors of the association, and  
24 officers, employees, and other persons lawfully acting on behalf  
25 of the association.

26 (b) Reinsure all or any portion of its potential liability  
27 with reinsurers licensed to transact insurance in this state or

1 approved by the commissioner.

2 (c) Provide for appropriate housing, equipment, and personnel  
3 as may be necessary to assure the efficient operation of the  
4 association.

5 (d) Pursuant to the plan of operation, adopt reasonable rules  
6 for the administration of the association, enforce those rules,  
7 and delegate authority, as the board considers necessary to  
8 assure the proper administration and operation of the association  
9 consistent with the plan of operation.

10 (e) Contract for goods and services, including independent  
11 claims management, actuarial, investment, and legal services,  
12 from others within or without this state to assure the efficient  
13 operation of the association.

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

16 (g) Perform other acts not specifically enumerated in this  
17 section that are necessary or proper to accomplish the purposes  
18 of the association and that are not inconsistent with this  
19 section or the plan of operation.

20 (9) A board of directors is created, hereinafter referred to  
21 as the board, which shall be responsible for the operation of the  
22 association consistent with the plan of operation and this  
23 section.

24 (10) The plan of operation shall provide for all of the  
25 following:

26 (a) The establishment of necessary facilities.

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

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

4 (d) Procedures governing the actual payment of premiums to  
5 the association.

6 (e) Reimbursement of each member of the board by the  
7 association for actual and necessary expenses incurred on  
8 association business.

9 (f) The investment policy of the association.

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

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

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

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

27 (14) Each director shall be appointed by the commissioner and



1 shall serve until that member's successor is selected and  
2 qualified. The chairperson of the board shall be elected by the  
3 board. A vacancy on the board shall be filled by the  
4 commissioner consistent with the plan of operation.

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

10 (16) An annual report of the operations of the association in  
11 a form and detail as may be determined by the board shall be  
12 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  
17 for the economical, fair, and nondiscriminatory administration of  
18 the 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  
24 writing, shall be considered to meet the requirements of this  
25 section if it is not disapproved by written order of the  
26 commissioner within 30 days after the date of its submission.  
27 Before disapproval of all or any part of the proposed plan of

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

9 (19) The proposed plan of operation or amendments to the plan  
10 of operation are subject to majority approval by the board,  
11 ratified by a majority of the membership having a vote, with  
12 voting rights being apportioned according to the premiums charged  
13 in subsection (7)(d) and are subject to approval by the  
14 commissioner.

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

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

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

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

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

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

7 **(25) The auditor general or a certified public accountant**  
8 **appointed by the auditor general shall annually conduct and**  
9 **deliver to the senate and house of representatives standing**  
10 **committees on insurance issues an audit of the association. In**  
11 **conducting the audit, the auditor general or appointed certified**  
12 **public accountant shall have access to all records of the**  
13 **association. Each audit required by this subsection shall**  
14 **include a determination of whether the association is likely to**  
15 **be able to continue to meet its obligations.**

16 (26) ~~-(25)-~~ As used in this section:

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

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

26 (c) "Ultimate loss" means the actual loss amounts that a  
27 member is obligated to pay and that are paid or payable by the

1 member, and do not include claim expenses. An ultimate loss is  
2 incurred by the association on the date that the loss occurs.