

SENATE BILL No. 392

April 22, 2003, Introduced by Senator GEORGE and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3103, 3104, and 3114 (MCL 500.3103, 500.3104, and 500.3114), section 3103 as amended by 1986 PA 173, section 3104 as amended by 2002 PA 662, and section 3114 as amended by 2002 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3103. ~~-(1)-~~ An owner or registrant of a motorcycle
2 shall ~~provide~~ **maintain** security ~~against loss resulting from~~
3 ~~liability imposed by law for property damage, bodily injury, or~~
4 ~~death suffered by a person arising out of the ownership,~~
5 ~~maintenance, or use of that motorcycle. The security shall~~
6 ~~conform with the requirements of section 3009(1).~~ **for payment of**
7 **benefits under personal protection insurance, property protection**
8 **insurance, and residual liability insurance. Security is only**

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1 required to be in effect during the period the motorcycle is
2 driven or moved upon a highway. Notwithstanding any other
3 provision in this act, an insurer that has issued an insurance
4 policy on a motorcycle that is not driven or moved upon a highway
5 may allow the insured owner or registrant of the motorcycle to
6 delete a portion of the coverages under the policy and maintain
7 the comprehensive coverage portion of the policy in effect.

8 ~~(2) Each insurer transacting insurance in this state which~~
9 ~~affords coverage for a motorcycle as described in subsection (1)~~
10 ~~also shall offer, to an owner or registrant of a motorcycle,~~
11 ~~security for the payment of first party medical benefits only, in~~
12 ~~increments of \$5,000.00, payable in the event the owner or~~
13 ~~registrant is involved in a motorcycle accident. An insurer~~
14 ~~providing first party medical benefits may offer, at appropriate~~
15 ~~premium rates, deductibles, provisions for the coordination of~~
16 ~~these benefits, and provisions for the subtraction of other~~
17 ~~benefits provided or required to be provided under the laws of~~
18 ~~any state or the federal government, subject to the prior~~
19 ~~approval of the commissioner. These deductibles and provisions~~
20 ~~shall apply only to benefits payable to the person named in the~~
21 ~~policy, the spouse of the insured, and any relative of either~~
22 ~~domiciled in the same household.~~

23 Sec. 3104. (1) An unincorporated, nonprofit association to
24 be known as the catastrophic claims association, hereinafter
25 referred to as the association, is created. Each insurer engaged
26 in writing insurance coverages that provide the security required
27 by section 3101(1) or 3103 within this state, as a condition of

1 its authority to transact insurance in this state, shall be a
2 member of the association and shall be bound by the plan of
3 operation of the association. ~~Each insurer engaged in writing~~
4 ~~insurance coverages that provide the security required by section~~
5 ~~3103(1) within this state, as a condition of its authority to~~
6 ~~transact insurance in this state, shall be considered a member of~~
7 ~~the association, but only for purposes of premiums under~~
8 ~~subsection (7)(d).~~ Except as expressly provided in this section,
9 the association is not subject to any laws of this state with
10 respect to insurers, but in all other respects the association is
11 subject to the laws of this state to the extent that the
12 association would be if it were an insurer organized and
13 subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

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

13 Beginning July 1, 2013, this \$500,000.00 amount shall be
14 increased biennially on July 1 of each odd-numbered year, for
15 policies issued or renewed before July 1 of the following
16 odd-numbered year, by the lesser of 6% or the consumer price
17 index, and rounded to the nearest \$5,000.00. This biennial
18 adjustment shall be calculated by the association by January 1 of
19 the year of its July 1 effective date.

20 (3) An insurer may withdraw from the association only upon
21 ceasing to write insurance that provides the security required by
22 section 3101(1) **or 3103** in this state.

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

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

7 (6) If a member has been merged or consolidated into another
8 insurer or another insurer has reinsured a member's entire
9 business that provides the security required by section 3101(1)
10 or 3103 in this state, the member and successors in interest of
11 the member remain liable for the member's obligations.

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

14 (a) Assume 100% of all liability as provided in subsection
15 (2).

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

26 (c) Maintain relevant loss and expense data relative to all
27 liabilities of the association and require each member to furnish

1 statistics, in connection with liabilities of the association, at
2 the times and in the form and detail as may be required by the
3 plan of operation.

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

1 in 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) "Motor vehicle accident policy" means a policy providing
22 the coverages required under section 3101(1) **or 3103**.

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

27 Sec. 3114. (1) Except as provided in subsections (2) —

1 **and** (3), ~~and (5),~~ a personal protection insurance policy
2 described in section 3101(1) **or 3103** applies to accidental bodily
3 injury to the person named in the policy, the person's spouse,
4 and a relative of either domiciled in the same household, if the
5 injury arises from a motor vehicle accident **or motorcycle**
6 **accident.** ~~A personal injury insurance policy described in~~
7 ~~section 3103(2) applies to accidental bodily injury to the person~~
8 ~~named in the policy, the person's spouse, and a relative of~~
9 ~~either domiciled in the same household, if the injury arises from~~
10 ~~a motorcycle accident. When personal protection insurance~~
11 ~~benefits or personal injury benefits described in section 3103(2)~~
12 ~~are payable to or for the benefit of an injured person under his~~
13 ~~or her own policy and would also be payable under the policy of~~
14 ~~his or her spouse, relative, or relative's spouse, the injured~~
15 ~~person's insurer shall pay all of the benefits and is not~~
16 ~~entitled to recoupment from the other insurer.~~

17 (2) A person suffering accidental bodily injury while an
18 operator or a passenger of a motor vehicle operated in the
19 business of transporting passengers shall receive the personal
20 protection insurance benefits to which the person is entitled
21 from the insurer of the motor vehicle. This subsection does not
22 apply to a passenger in the following, unless that passenger is
23 not entitled to personal protection insurance benefits under any
24 other policy:

25 (a) A school bus, as defined by the department of education,
26 providing transportation not prohibited by law.

27 (b) A bus operated by a common carrier of passengers

1 certified by the department of transportation.

2 (c) A bus operating under a government sponsored
3 transportation program.

4 (d) A bus operated by or providing service to a nonprofit
5 organization.

6 (e) A taxicab insured as prescribed in section 3101 or 3102.

7 (f) A bus operated by a canoe or other watercraft, bicycle,
8 or horse livery used only to transport passengers to or from a
9 destination point.

10 (3) An employee, his or her spouse, or a relative of either
11 domiciled in the same household, who suffers accidental bodily
12 injury while an occupant of a motor vehicle owned or registered
13 by the employer, shall receive personal protection insurance
14 benefits to which the employee is entitled from the insurer of
15 the furnished vehicle.

16 (4) Except as provided in subsections (1) to (3), a person
17 suffering accidental bodily injury arising from a motor vehicle
18 accident **or motorcycle accident** while an occupant of a motor
19 vehicle **or motorcycle** shall claim personal protection insurance
20 benefits from insurers in the following order of priority:

21 (a) The insurer of the owner or registrant of the **motor**
22 vehicle **or motorcycle** occupied.

23 (b) The insurer of the operator of the **motor** vehicle **or**
24 **motorcycle** occupied.

25 ~~(5) A person suffering accidental bodily injury arising from~~
26 ~~a motor vehicle accident which shows evidence of the involvement~~
27 ~~of a motor vehicle while an operator or passenger of a motorcycle~~

1 ~~shall claim personal protection insurance benefits from insurers~~
2 ~~in the following order of priority:~~

3 ~~—— (a) The insurer of the owner or registrant of the motor~~
4 ~~vehicle involved in the accident.~~

5 ~~—— (b) The insurer of the operator of the motor vehicle involved~~
6 ~~in the accident.~~

7 ~~—— (c) The motor vehicle insurer of the operator of the~~
8 ~~motorcycle involved in the accident.~~

9 ~~—— (d) The motor vehicle insurer of the owner or registrant of~~
10 ~~the motorcycle involved in the accident.~~

11 ~~—— (6) If 2 or more insurers are in the same order of priority~~
12 ~~to provide personal protection insurance benefits under~~
13 ~~subsection (5), an insurer paying benefits due is entitled to~~
14 ~~partial recoupment from the other insurers in the same order of~~
15 ~~priority, together with a reasonable amount of partial recoupment~~
16 ~~of the expense of processing the claim, in order to accomplish~~
17 ~~equitable distribution of the loss among all of the insurers.~~

18 Enacting section 1. This amendatory act takes effect
19 January 1, 2004.