

SENATE BILL NO. 302

May 07, 2019, Introduced by Senators BAYER, CHANG, LUCIDO, HOLLIER, POLEHANKI, RUNESTAD, BULLOCK, ALEXANDER, IRWIN, MOSS, MCCANN, WOJNO, HERTEL, ANANICH, GEISS, MCMORROW and MCBROOM and referred to the Committee on Insurance and Banking.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 134 and 3104 (MCL 500.134 and 500.3104),
section 134 as amended by 1990 PA 256 and section 3104 as amended
by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 134. (1) Every certificate of authority or license in
2 force immediately ~~prior to~~ **before** January 1, 1957 and existing

1 under any act repealed by this act is valid until its original
2 expiration date, unless earlier terminated in accordance with this
3 act.

4 (2) Any plan of operation adopted by an association or
5 facility, and any premium or assessment levied against an insurer
6 member of that association or facility, is ~~hereby validated~~ **valid**
7 retroactively to the date of its original adoption or levy and
8 ~~shall continue~~ **continues** in force and effect according to the terms
9 of the plan of operation, premium, or assessment until otherwise
10 changed by the ~~commissioner~~ **director** or the board of directors of
11 the association or facility pursuant to this act.

12 (3) An association or facility or the board of directors of
13 the association or facility is not a state agency and the money of
14 an association or facility is not state money.

15 (4) ~~A~~ **Except as otherwise provided in section 3104, a** record
16 of an association or facility ~~shall be exempted~~ **is exempt** from
17 disclosure ~~pursuant to~~ **under** section 13 of the freedom of
18 information act, ~~Act No. 442 of the Public Acts of 1976, being~~
19 ~~section 15.243 of the Michigan Compiled Laws~~ **1976 PA 442, MCL**
20 **15.243.**

21 (5) Any premium or assessment levied by an association or
22 facility, or any premium or assessment of a similar association or
23 facility formed under a law in force outside this state, is not a
24 burden or special burden for purposes of a calculation under
25 section 476a, and any premium or assessment paid to an association
26 or facility shall not be included in determining the aggregate
27 amount a foreign insurer pays to the ~~commissioner~~ **department of**
28 **treasury** under section 476a.

29 (6) As used in this section, "association or facility" means

1 an association of insurers created under this act and any other
 2 association or facility formed under this act as a nonprofit
 3 organization of insurer members, including, but not limited to, the
 4 following:

5 (a) The Michigan worker's compensation placement facility
 6 created under chapter 23.

7 (b) The Michigan basic property insurance association created
 8 under ~~section~~**chapter** 29.

9 (c) The catastrophic claims association created under chapter
 10 31.

11 (d) The Michigan automobile insurance placement facility
 12 created under chapter 33.

13 (e) The Michigan life and health insurance guaranty
 14 association created under chapter 77.

15 (f) The property and casualty guaranty association created
 16 under chapter 79.

17 (g) The assigned claims facility created under section 3171.

18 Sec. 3104. (1) ~~An~~**The catastrophic claims association is**
 19 **created as an** unincorporated, nonprofit association. ~~to be known as~~
 20 ~~the catastrophic claims association, hereinafter referred to as the~~
 21 ~~association, is created.~~ Each insurer engaged in writing insurance
 22 coverages that provide the security required by section 3101(1)
 23 ~~within~~**in** this state, as a condition of its authority to transact
 24 insurance in this state, shall be a member of the association and
 25 ~~shall be~~**is** bound by the plan of operation of the association. ~~Each~~
 26 **An** insurer engaged in writing insurance coverages that provide the
 27 security required by section 3103(1) ~~within~~**in** this state, as a
 28 condition of its authority to transact insurance in this state,
 29 ~~shall be~~**is** considered **to be** a member of the association, but only

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

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

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

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

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

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

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

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

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

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

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

29 (j) For a motor vehicle accident policy issued or renewed

during the period July 1, 2010 to June 30, 2011, \$480,000.00.

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

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

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

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

Beginning July 1, 2013, ~~2019~~, this ~~\$500,000.00~~ **\$555,000.00** amount shall ~~must~~ be increased biennially on July 1 of each odd-numbered year, for policies issued or renewed before July 1 of the following 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 this** 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

1 of the remaining members against the estate or funds of the
2 insolvent member for ~~sums~~**money** due the association.

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

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

10 (a) Assume 100% of all liability as provided in subsection
11 (2).

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

26 (d) In a manner provided for in the plan of operation, **and**
27 **subject to the director of the department's approval**, calculate and
28 charge to members of the association a total premium sufficient to
29 cover the expected losses and expenses of the association that the

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) Pursuant to the plan of operation, adopt reasonable rules
2 for the administration of the association, enforce those rules, and
3 delegate authority, as the board considers necessary to assure the
4 proper administration and operation of the association consistent
5 with the plan of operation.

6 (e) Contract for goods and services, including independent
7 claims management, actuarial, investment, and legal services, from
8 others ~~within-in~~ or ~~without-outside of~~ this state to assure the
9 efficient operation of the association.

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

12 (g) Perform other acts not specifically enumerated in this
13 section that are necessary or proper to accomplish the purposes of
14 the association and that are not inconsistent with this section or
15 the plan of operation.

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

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

22 (a) The establishment of necessary facilities.

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

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

26 (d) Procedures governing the actual payment of premiums to the
27 association.

28 (e) Reimbursement of each member of the board by the
29 association for actual and necessary expenses incurred on

1 association business.

2 (f) The investment policy of the association.

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

5 (11) ~~Each~~**The** board ~~shall~~**must** include members that would
6 contribute a total of not less than 40% of the total premium
7 calculated pursuant to subsection (7)(d) **and 1 member representing**
8 **the general public, appointed as provided in subsection (14).** Each
9 director ~~shall be~~**is** entitled to 1 vote. The initial term of office
10 of a director ~~shall be~~**is** 2 years.

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

18 (13) The board ~~shall~~**must** consist of ~~5-6~~ directors ~~and the~~
19 ~~commissioner~~**director of the department, who** shall ~~be an ex officio~~
20 **act as a voting** member of the board. ~~without vote.~~

21 (14) ~~Each director~~**The director of the department** shall ~~be~~
22 ~~appointed by the commissioner and~~**appoint the directors. The**
23 **director of the department shall appoint the first public member to**
24 **the board within 3 months after the effective date of the**
25 **amendatory act that added this sentence. A director** shall serve
26 ~~until that member's~~**his or her** successor is selected and qualified.
27 The **board shall elect the** chairperson of the board. ~~shall be~~
28 ~~elected by the board. A~~**The director of the department shall fill**
29 **any** vacancy on the board ~~shall be filled by the commissioner~~

1 ~~consistent with~~ **as provided in** the plan of operation.

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

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

11 ~~(17) Not more than 60 days after the initial organizational~~
12 ~~meeting of the board, the board shall submit to the commissioner~~
13 ~~for approval a proposed plan of operation consistent with the~~
14 ~~objectives and provisions of this section, which shall provide for~~
15 ~~the economical, fair, and nondiscriminatory administration of the~~
16 ~~association and for the prompt and efficient provision of~~
17 ~~indemnity. If a plan is not submitted within this 60 day period,~~
18 ~~then the commissioner, after consultation with the board, shall~~
19 ~~formulate and place into effect a plan consistent with this~~
20 ~~section.~~

21 ~~(18) The plan of operation, unless approved sooner in writing,~~
22 ~~shall be considered to meet the requirements of this section if it~~
23 ~~is not disapproved by written order of the commissioner within 30~~
24 ~~days after the date of its submission. Before disapproval of all or~~
25 ~~any part of the proposed plan of operation, the commissioner shall~~
26 ~~notify the board in what respect the plan of operation fails to~~
27 ~~meet the requirements and objectives of this section. If the board~~
28 ~~fails to submit a revised plan of operation that meets the~~
29 ~~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.~~

~~(17) (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), and ~~are subject to approval by the commissioner.~~ **director of the department.**

~~(18) (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 insurance in this state.

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

~~(20) (22) Premiums charged members by the association shall~~ **must** be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized.

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

1 (22) ~~(24)~~ The association does not have liability for losses
2 occurring before July 1, 1978.

3 (23) The board shall conduct its business at a public meeting
4 of the board held in compliance with the open meetings act, 1976 PA
5 267, MCL 15.261 to 15.275.

6 (24) A writing prepared, owned, used, in the possession of, or
7 retained by the board in the performance of an official function is
8 subject to disclosure under the freedom of information act, 1976 PA
9 442, MCL 15.231 to 15.246, as if the board were a public body
10 subject to that act.

11 (25) An independent certified public accountant appointed by
12 the director of the department shall annually conduct and deliver
13 to the director of the department and the senate and house of
14 representatives standing committees on insurance issues an audit of
15 the association. In conducting the audit, the appointed certified
16 public accountant must be given access to all records of the
17 association. Each audit required by this subsection must include a
18 determination of whether the association is likely to be able to
19 continue to meet its obligations.

20 (26) ~~(25)~~ As used in this section:

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

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

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

1 adjustment under subsection ~~(2)(k)~~ **(2)(n)** as reported by the United
2 States ~~department~~ **Department** of labor, ~~bureau~~ **Labor, Bureau** of
3 ~~labor statistics,~~ **Labor Statistics**, and as certified by the
4 ~~commissioner.~~ **director of the department.**

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

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

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No. 301 of the 100th Legislature is enacted into
13 law.