



# HOUSE BILL No. 6116

September 25, 1996, Introduced by Rep. Law and referred to the Committee on Insurance.

A bill to amend sections 3104, 3107, 7935, and 8103 of Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," section 3104 as amended by Act No. 445 of the Public Acts of 1980, section 3107 as amended by Act No. 191 of the Public Acts of 1991, section 7935 as amended by Act No. 41 of the Public Acts of 1980, and section 8103 as amended by Act No. 227 of the Public Acts of 1994, being sections 500.3104, 500.3107, 500.7935, and 500.8103 of the Michigan Compiled Laws; and to add chapter 31a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3104, 3107, 7935, and 8103 of Act  
2 No. 218 of the Public Acts of 1956, section 3104 as amended by  
3 Act No. 445 of the Public Acts of 1980, section 3107 as amended  
4 by Act No. 191 of the Public Acts of 1991, section 7935 as  
5 amended by Act No. 41 of the Public Acts of 1980, and section

1 8103 as amended by Act No. 227 of the Public Acts of 1994, being  
2 sections 500.3104, 500.3107, 500.7935, and 500.8103 of the  
3 Michigan Compiled Laws, are amended and chapter 31a is added to  
4 read as follows:

5       Sec. 3104. (1) ~~An unincorporated, nonprofit association~~  
6 ~~to be known as the catastrophic claims association, hereinafter~~  
7 ~~referred to as the association, is created.~~ Each insurer engaged  
8 in writing insurance coverages ~~which~~ THAT provide the security  
9 required by section 3101(1) within this state, as a condition of  
10 its authority to transact insurance in this state, shall be a  
11 member of the CATASTROPHIC CLAIMS association and shall be bound  
12 by the plan of operation of the association. Each insurer  
13 engaged in writing insurance coverages ~~which~~ THAT provide the  
14 security required by section 3103(1) within this state, as a con-  
15 dition of its authority to transact insurance in this state,  
16 shall be considered a member of the association, but only for  
17 purposes of assessments under SECTION 3197(1)(E). ~~subsection~~  
18 ~~(7)(d). Except as expressly provided in this section, the asso-~~  
19 ~~ciation shall not be subject to any laws of this state with~~  
20 ~~respect to insurers, but in all other respects the association~~  
21 ~~shall be subject to the laws of this state to the extent that the~~  
22 ~~association would be were it an insurer organized and subsisting~~  
23 ~~under chapter 50.~~

24       ~~(2) The association shall provide and each member shall~~  
25 ~~accept indemnification for 100% of the amount of ultimate loss~~  
26 ~~sustained under personal protection insurance coverages in excess~~  
27 ~~of \$250,000.00 in each loss occurrence. As used in this section,~~

1 ~~"ultimate loss" means the actual loss amounts which a member is~~  
2 ~~obligated to pay and which are paid or payable by the member, and~~  
3 ~~shall not include claim expenses. An ultimate loss is incurred~~  
4 ~~by the association on the date which the loss occurs.~~

5 (2) ~~-(3)-~~ An insurer may withdraw from the association only  
6 upon ceasing to write insurance ~~which~~ THAT provides the secur-  
7 ity required by section 3101(1) in this state.

8 ~~-(4)-~~ An insurer whose membership in the association has been  
9 terminated by withdrawal shall continue to be bound by the plan  
10 of operation, and upon withdrawal, all unpaid premiums which have  
11 been charged to the withdrawing member shall be payable as of the  
12 effective date of the withdrawal.

13 ~~-(5)-~~ An unsatisfied net liability to the association of an  
14 insolvent member shall be assumed by and apportioned among the  
15 remaining members of the association as provided in the plan of  
16 operation. The association shall have all rights allowed by law  
17 on behalf of the remaining members against the estate or funds of  
18 the insolvent member for sums due the association.

19 (6) ~~When a member has been merged or consolidated into~~  
20 ~~another insurer or another insurer has reinsured a member's~~  
21 ~~entire business which provides the security required by section~~  
22 ~~3101(1) in this state, the member and successors in interest of~~  
23 ~~the member shall remain liable for the member's obligations.~~

24 (7) ~~The association shall do all of the following on behalf~~  
25 ~~of the members of the association:~~

26 (a) ~~Assume 100% of all liability as provided in subsection~~  
27 ~~(2).~~

1       ~~(b) Establish procedures by which members shall promptly~~  
2 ~~report to the association each claim which, on the basis of the~~  
3 ~~injuries or damages sustained, may reasonably be anticipated to~~  
4 ~~involve the association if the member is ultimately held legally~~  
5 ~~liable for the injuries or damages. Solely for the purpose of~~  
6 ~~reporting claims, the member shall in all instances consider~~  
7 ~~itself legally liable for the injuries or damages. The member~~  
8 ~~shall also advise the association of subsequent developments~~  
9 ~~likely to materially affect the interest of the association in~~  
10 ~~the claim.~~

11       ~~(c) Maintain relevant loss and expense data relative to all~~  
12 ~~liabilities of the association and require each member to furnish~~  
13 ~~statistics, in connection with liabilities of the association, at~~  
14 ~~the times and in the form and detail as may be required by the~~  
15 ~~plan of operation.~~

16       ~~(d) In a manner provided for in the plan of operation, cal-~~  
17 ~~culate and charge to members of the association a total premium~~  
18 ~~sufficient to cover the expected losses and expenses of the asso-~~  
19 ~~ciation which the association will likely incur during the period~~  
20 ~~for which the premium is applicable. The premium shall include~~  
21 ~~an amount to cover incurred but not reported losses for the~~  
22 ~~period and may be adjusted for any excess or deficient premiums~~  
23 ~~from previous periods. Excesses or deficiencies from previous~~  
24 ~~periods may be fully adjusted in a single period or may be~~  
25 ~~adjusted over several periods in a manner provided for in the~~  
26 ~~plan of operation. Each member shall be charged an amount equal~~  
27 ~~to that member's total earned car years of insurance providing~~

~~1 the security required by section 3101(1) or 3103(1), or both,~~  
~~2 written in this state during the period to which the premium~~  
~~3 applies, multiplied by the average premium per car. The average~~  
~~4 premium per car shall be the total premium calculated divided by~~  
~~5 the total earned car years of insurance providing the security~~  
~~6 required by section 3101(1) or 3103(1) written in this state of~~  
~~7 all members during the period to which the premium applies. As~~  
~~8 used in this subdivision, "car" includes a motorcycle.~~

~~9 (e) Require and accept the payment of premiums from members~~  
~~10 of the association as provided for in the plan of operation. The~~  
~~11 association shall do either of the following.~~

~~12 (i) Require payment of the premium in full within 45 days~~  
~~13 after the premium charge.~~

~~14 (ii) Require payment of the premiums to be made periodically~~  
~~15 to cover the actual cash obligations of the association.~~

~~16 (f) Receive and distribute all sums required by the opera-~~  
~~17 tion of the association.~~

~~18 (g) Establish procedures for reviewing claims procedures and~~  
~~19 practices of members of the association. If the claims proce-~~  
~~20 dures or practices of a member are considered inadequate to prop-~~  
~~21 erly service the liabilities of the association, the association~~  
~~22 may undertake or may contract with another person, including~~  
~~23 another member, to adjust or assist in the adjustment of claims~~  
~~24 for the member on claims which create a potential liability to~~  
~~25 the association and may charge the cost of the adjustment to the~~  
~~26 member.~~

~~(0) In addition to other powers granted to it by this section, the association may do all of the following.~~

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

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

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

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

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

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

1 ~~(g) Perform other acts not specifically enumerated in this~~  
2 ~~section which are necessary or proper to accomplish the purposes~~  
3 ~~of the association and which are not inconsistent with this sec-~~  
4 ~~tion or the plan of operation.~~

5 ~~(9) A board of directors is created, hereinafter referred to~~  
6 ~~as the board, which shall be responsible for the operation of the~~  
7 ~~association consistent with the plan of operation and this~~  
8 ~~section.~~

9 ~~(10) The plan of operation shall provide for all of the~~  
10 ~~following:~~

11 ~~(a) The establishment of necessary facilities.~~

12 ~~(b) The management and operation of the association.~~

13 ~~(c) A preliminary premium, payable by each member in propor-~~  
14 ~~tion to its total first year premium, for initial expenses neces-~~  
15 ~~sary to commence operation of the association.~~

16 ~~(d) Procedures to be utilized in charging premiums, includ-~~  
17 ~~ing adjustments from excess or deficient premiums from prior~~  
18 ~~periods.~~

19 ~~(e) Procedures governing the actual payment of premiums to~~  
20 ~~the association.~~

21 ~~(f) Reimbursement of each member of the board by the associ-~~  
22 ~~ation for actual and necessary expenses incurred on association~~  
23 ~~business.~~

24 ~~(g) The investment policy of the association.~~

25 ~~(h) Any other matters required by or necessary to effec-~~  
26 ~~tively implement this section.~~

1       ~~(11) Not more than 30 days after the effective date of this~~  
2 ~~section, the commissioner shall convene an organizational meeting~~  
3 ~~of the board. The board shall be initially composed of 5 members~~  
4 ~~of the association appointed by the commissioner to serve as~~  
5 ~~directors, and the commissioner or a designated representative of~~  
6 ~~the commissioner serving as an ex officio member of the board~~  
7 ~~without vote. The initial board and each successor board shall~~  
8 ~~include members which would contribute a total of not less than~~  
9 ~~40% of the total premium calculated pursuant to subsection~~  
10 ~~(7)(d). Each director shall be entitled to 1 vote. The initial~~  
11 ~~term of office of a director shall be 2 years.~~

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

19       ~~(13) The board shall consist of 5 directors and the commis-~~  
20 ~~sioner shall be an ex officio member of the board without vote.~~

21       ~~(14) Each director shall be appointed by the commissioner~~  
22 ~~and shall serve until that member's successor is selected and~~  
23 ~~qualified. The chairperson of the board shall be elected by the~~  
24 ~~board. A vacancy on the board shall be filled by the commis-~~  
25 ~~sioner consistent with the plan of operation.~~

26       ~~(15) After the board is appointed, the board shall meet as~~  
27 ~~often as the chairperson, the commissioner, or the plan of~~



~~1 operation shall require, or at the request of any 3 members of  
2 the board. The chairperson shall retain the right to vote on all  
3 issues. Four members of the board shall constitute a quorum.~~

~~4 (16) An annual report of the operations of the association  
5 in a form and detail as may be determined by the board shall be  
6 furnished to each member.~~

~~7 (17) Not more than 60 days after the initial organizational  
8 meeting of the board, the board shall submit to the commissioner  
9 for approval a proposed plan of operation consistent with the  
10 objectives and provisions of this section, which shall provide  
11 for the economical, fair, and nondiscriminatory administration of  
12 the association and for the prompt and efficient provision of  
13 indemnity. If a plan is not submitted within this 60 day period,  
14 then the commissioner, after consultation with the board, shall  
15 formulate and place into effect a plan consistent with this  
16 section.~~

~~17 (18) The plan of operation, unless approved sooner in writ-  
18 ing, shall be considered to meet the requirements of this section  
19 if it is not disapproved by written order of the commissioner  
20 within 30 days after the date of its submission. Before disap-  
21 proval of all or any part of the proposed plan of operation, the  
22 commissioner shall notify the board in what respect the plan of  
23 operation fails to meet the requirements and objectives of this  
24 section. If the board fails to submit a revised plan of opera-  
25 tion which meets the requirements and objectives of this section  
26 within the 30 day period, the commissioner shall enter an order  
27 accordingly and shall immediately formulate and place into effect~~

1 ~~a plan consistent with the requirements and objectives of this~~  
2 ~~section.~~

3 ~~(19) The proposed plan of operation or amendments to the~~  
4 ~~plan of operation shall be subject to majority approval by the~~  
5 ~~board, ratified by a majority of the membership having a vote,~~  
6 ~~with voting rights being apportioned according to the premiums~~  
7 ~~charged in subsection (7)(d) and shall be subject to approval by~~  
8 ~~the commissioner.~~

9 ~~(20) Upon approval by the commissioner and ratification by~~  
10 ~~the members of the plan submitted, or upon the promulgation of a~~  
11 ~~plan by the commissioner, each insurer authorized to write insur-~~  
12 ~~ance providing the security required by section 3101(1) in this~~  
13 ~~state, as defined in this section, shall be bound by and shall~~  
14 ~~formally subscribe to and participate in the plan approved as a~~  
15 ~~condition of maintaining its authority to transact insurance in~~  
16 ~~this state.~~

17 ~~(21) The association shall be subject to all the reporting,~~  
18 ~~loss reserve, and investment requirements of the commissioner to~~  
19 ~~the same extent as would a member of the association.~~

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

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

1       ~~(24) This section shall take effect on July 1, 1978. The~~  
2 ~~association shall not have liability for losses occurring before~~  
3 ~~the effective date of this section.~~

4       Sec. 3107. (1) Except as provided in subsection (2), per-  
5 sonal protection insurance benefits are payable for the  
6 following:

7       (a) Allowable expenses consisting of all reasonable charges  
8 incurred for reasonably necessary products, services, and accom-  
9 modations for an injured person's care, recovery, or rehabilita-  
10 tion AND, FOR BENEFITS PAYABLE BY THE CATASTROPHIC CLAIMS ASSOCI-  
11 ATION, SUBJECT TO THE ASSOCIATION'S CASE MANAGEMENT RULES.

12 Allowable expenses within personal protection insurance coverage  
13 shall not include charges for a hospital room in excess of a rea-  
14 sonable and customary charge for semiprivate accommodations  
15 except if the injured person requires special or intensive care,  
16 or for funeral and burial expenses in EXCESS OF the amount set  
17 forth in the policy which shall not be less than \$1,750.00 or  
18 more than \$5,000.00.

19       (b) Work loss consisting of loss of income from work an  
20 injured person would have performed during the first 3 years  
21 after the date of the accident if he or she had not been  
22 injured. Work loss does not include any loss after the date on  
23 which the injured person dies. Because the benefits received  
24 from personal protection insurance for loss of income are not  
25 taxable income, the benefits payable for such loss of income  
26 shall be reduced 15% unless the claimant presents to the insurer  
27 in support of his or her claim reasonable proof of a lower value

1 of the income tax advantage in his or her case, in which case the  
2 lower value shall apply. Beginning March 30, 1973, the benefits  
3 payable for work loss sustained in a single 30-day period and the  
4 income earned by an injured person for work during the same  
5 period together shall not exceed \$1,000.00, which maximum shall  
6 apply pro rata to any lesser period of work loss. Beginning  
7 October 1, 1974, the maximum shall be adjusted annually to  
8 reflect changes in the cost of living under rules prescribed by  
9 the commissioner but any change in the maximum shall apply only  
10 to benefits arising out of accidents occurring subsequent to the  
11 date of change in the maximum.

12 (c) Expenses not exceeding \$20.00 per day, reasonably  
13 incurred in obtaining ordinary and necessary services in lieu of  
14 those that, if he or she had not been injured, an injured person  
15 would have performed during the first 3 years after the date of  
16 the accident, not for income but for the benefit of himself or  
17 herself or of his or her dependent.

18 (2) A person who is 60 years of age or older and in the  
19 event of an accidental bodily injury would not be eligible to  
20 receive work loss benefits under subsection (1)(b) may waive cov-  
21 erage for work loss benefits by signing a waiver on a form pro-  
22 vided by the insurer. An insurer shall offer a reduced premium  
23 rate to a person who waives coverage under this subsection for  
24 work loss benefits. Waiver of coverage for work loss benefits  
25 applies only to work loss benefits payable to the person or per-  
26 sons who have signed the waiver form.

## CHAPTER 31A

SEC. 3181. AS USED IN THIS CHAPTER:

(A) "ADVISORY BOARD" MEANS THE ADVISORY BOARD CREATED IN SECTION 3186.

(B) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION CREATED IN SECTION 3183.

(C) "BOARD" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION BOARD OF DIRECTORS CREATED IN SECTION 3185.

(D) "ULTIMATE LOSS" MEANS THE ACTUAL LOSS AMOUNTS THAT AN ASSOCIATION MEMBER IS OBLIGATED TO PAY AND THAT ARE PAID OR PAYABLE BY THE MEMBER. ULTIMATE LOSS DOES NOT INCLUDE CLAIM EXPENSES.

SEC. 3183. (1) AN UNINCORPORATED, NONPROFIT ASSOCIATION TO BE KNOWN AS THE CATASTROPHIC CLAIMS ASSOCIATION IS CREATED. EXCEPT AS EXPRESSLY PROVIDED IN THIS CHAPTER, THE ASSOCIATION IS NOT SUBJECT TO ANY LAW 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 WERE IT AN INSURER ORGANIZED AND SUBSISTING UNDER CHAPTER 50.

(2) THE ASSOCIATION IS SUBJECT TO ALL THE REPORTING, LOSS RESERVE, AND INVESTMENT REQUIREMENTS REQUIRED BY THE COMMISSIONER TO THE SAME EXTENT AS IS A MEMBER OF THE ASSOCIATION.

(3) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER MAY VISIT THE ASSOCIATION AT ANY TIME AND EXAMINE ANY AND ALL OF THE ASSOCIATION'S AFFAIRS.

SEC. 3185. (1) A CATASTROPHIC CLAIMS ASSOCIATION BOARD OF DIRECTORS IS CREATED AND IS RESPONSIBLE FOR THE OPERATION OF THE

1 ASSOCIATION CONSISTENT WITH THE PLAN OF OPERATION AND THIS  
2 CHAPTER. THE BOARD SHALL CONSIST OF 5 DIRECTORS AND THE COMMIS-  
3 SIONER OR HIS OR HER DESIGNATED REPRESENTATIVE WHO SHALL BE AN EX  
4 OFFICIO MEMBER OF THE BOARD WITHOUT VOTE.

5 (2) EACH DIRECTOR SHALL BE APPOINTED BY THE COMMISSIONER AND  
6 SHALL SERVE UNTIL THAT MEMBER'S SUCCESSOR IS SELECTED AND  
7 QUALIFIED. EACH DIRECTOR SERVING ON THE BOARD BEFORE JANUARY 1,  
8 1996 SHALL FINISH HIS OR HER TERM OF OFFICE. EACH BOARD  
9 APPOINTED ON OR AFTER JANUARY 1, 1996 SHALL INCLUDE MEMBERS THAT  
10 HAVE SKILL AND EXPERTISE IN THE MANAGEMENT OF SPECIFIC CASES OF  
11 LONG-TERM HEALTH CARE. THE CHAIRPERSON OF THE BOARD SHALL BE  
12 ELECTED BY THE BOARD. A VACANCY ON THE BOARD SHALL BE FILLED BY  
13 THE COMMISSIONER CONSISTENT WITH THE PLAN OF OPERATION.

14 (3) EACH DIRECTOR SHALL BE ENTITLED TO 1 VOTE. THE INITIAL  
15 TERM OF OFFICE OF A DIRECTOR SHALL BE 2 YEARS.

16 (4) THE BOARD SHALL MEET AS OFTEN AS THE CHAIRPERSON, THE  
17 COMMISSIONER, OR THE PLAN OF OPERATION REQUIRES, OR AT THE  
18 REQUEST OF ANY 3 MEMBERS OF THE BOARD. THE CHAIRPERSON MAY VOTE  
19 ON ALL ISSUES. FOUR MEMBERS OF THE BOARD CONSTITUTE A QUORUM.

20 SEC. 3186. (1) AN ADVISORY BOARD TO THE BOARD OF DIRECTORS  
21 IS CREATED. THE ADVISORY BOARD SHALL CONSIST OF THE COMMISSIONER  
22 OR HIS OR HER DESIGNATED REPRESENTATIVE WHO SHALL BE AN EX OFFI-  
23 CIO MEMBER WITHOUT VOTE AND 4 MEMBERS APPOINTED BY THE COMMIS-  
24 SIONER AS FOLLOWS: 2 MEMBERS HAVING CLAIMS BEING SERVICED BY THE  
25 ASSOCIATION AT THE TIME OF APPOINTMENT AND 2 MEMBERS REPRESENTING  
26 HEALTH CARE PROVIDERS PROVIDING LONG-TERM HEALTH CARE SERVICES TO

1 INDIVIDUALS WITH CLAIMS BEING SERVICED BY THE ASSOCIATION AT THE  
2 TIME OF APPOINTMENT.

3 (2) THE CHAIRPERSON OF THE ADVISORY BOARD SHALL BE ELECTED  
4 BY THE ADVISORY BOARD. A VACANCY ON THE ADVISORY BOARD SHALL BE  
5 FILLED BY THE COMMISSIONER CONSISTENT WITH THE REVISED PLAN OF  
6 OPERATION.

7 (3) EACH ADVISORY BOARD MEMBER IS ENTITLED TO 1 VOTE. THE  
8 TERM OF OFFICE OF AN ADVISORY BOARD MEMBER IS 2 YEARS.

9 (4) THE ADVISORY BOARD SHALL MEET AS OFTEN AS THE CHAIR-  
10 PERSON, THE COMMISSIONER, OR THE REVISED PLAN OF OPERATION  
11 REQUIRES, OR AT THE REQUEST OF ANY 3 MEMBERS OF THE ADVISORY  
12 BOARD. THE CHAIRPERSON MAY VOTE ON ALL ISSUES. FOUR MEMBERS OF  
13 THE ADVISORY BOARD CONSTITUTE A QUORUM.

14 SEC. 3187. (1) BY MARCH 1, 1996, THE BOARD SHALL SUBMIT TO  
15 THE COMMISSIONER FOR APPROVAL A REVISED PLAN OF OPERATION CONSIS-  
16 TENT WITH THIS CHAPTER. THE REVISED PLAN OF OPERATION SHALL PRO-  
17 VIDE FOR THE ECONOMICAL, FAIR, AND NONDISCRIMINATORY ADMINISTRA-  
18 TION OF THE ASSOCIATION AND FOR THE PROMPT AND EFFICIENT PAYMENT  
19 AND MANAGEMENT OF COVERED CLAIMS. IF A PLAN IS NOT SUBMITTED ON  
20 OR BEFORE MARCH 1, 1996, THE COMMISSIONER, AFTER CONSULTATION  
21 WITH THE BOARD, SHALL FORMULATE AND PLACE INTO EFFECT A PLAN CON-  
22 SISTENT WITH THIS CHAPTER.

23 (2) THE REVISED PLAN OF OPERATION SHALL PROVIDE FOR ALL OF  
24 THE FOLLOWING:

25 (A) THE ESTABLISHMENT OF NECESSARY FACILITIES.

26 (B) THE MANAGEMENT AND OPERATION OF THE ASSOCIATION.

1 (C) THE ADOPTION OF RULES PROVIDING FOR COST-EFFICIENT  
2 HEALTH CARE MANAGEMENT OF INDIVIDUAL COVERED CLAIMS.

3 (D) PROCEDURES TO BE USED IN CHARGING PREMIUMS, INCLUDING  
4 ADJUSTMENTS FROM EXCESS OR DEFICIENT PREMIUMS FROM PRIOR  
5 PERIODS.

6 (E) PROCEDURES GOVERNING THE ACTUAL PAYMENT OF PREMIUMS TO  
7 THE ASSOCIATION.

8 (F) REIMBURSEMENT OF EACH MEMBER OF THE BOARD BY THE ASSOCI-  
9 ATION FOR ACTUAL AND NECESSARY EXPENSES INCURRED ON ASSOCIATION  
10 BUSINESS.

11 (G) THE INVESTMENT POLICY OF THE ASSOCIATION.

12 (H) THE ADOPTION OF RULES PROVIDING FOR THE COMPOSITION AND  
13 TERM OF SUCCESSOR BOARDS AND ADVISORY BOARDS TO THE INITIAL BOARD  
14 AND ADVISORY BOARD, CONSISTENT WITH THE REVISED MEMBERSHIP COMPO-  
15 SITION REQUIREMENTS IN THIS CHAPTER. TERMS OF THE DIRECTORS AND  
16 ADVISORY BOARD MEMBERS SHALL BE STAGGERED SO THAT THE TERMS OF  
17 ALL THE DIRECTORS AND ADVISORY BOARD MEMBERS DO NOT EXPIRE AT THE  
18 SAME TIME AND SO THAT A DIRECTOR AND AN ADVISORY BOARD MEMBER DO  
19 NOT SERVE A TERM OF MORE THAN 4 YEARS.

20 (I) ANY OTHER MATTERS REQUIRED BY OR NECESSARY TO EFFEC-  
21 TIVELY IMPLEMENT THIS SECTION.

22 (3) THE REVISED PLAN OF OPERATION, UNLESS APPROVED SOONER IN  
23 WRITING, MEETS THE REQUIREMENTS OF THIS CHAPTER IF IT IS NOT DIS-  
24 APPROVED BY WRITTEN ORDER OF THE COMMISSIONER WITHIN 30 DAYS  
25 AFTER THE DATE OF ITS SUBMISSION. BEFORE DISAPPROVAL OF ALL OR  
26 ANY PART OF THE PROPOSED REVISED PLAN OF OPERATION, THE  
27 COMMISSIONER SHALL NOTIFY THE BOARD IN WHAT RESPECT THE REVISED



1 PLAN OF OPERATION FAILS TO MEET THE REQUIREMENTS AND OBJECTIVES  
2 OF THIS CHAPTER. IF THE BOARD FAILS TO SUBMIT A SECOND REVISED  
3 PLAN OF OPERATION THAT MEETS THE REQUIREMENTS AND OBJECTIVES OF  
4 THIS SECTION WITHIN THE 30-DAY PERIOD, THE COMMISSIONER SHALL  
5 ENTER AN ORDER ACCORDINGLY AND SHALL IMMEDIATELY FORMULATE AND  
6 PLACE INTO EFFECT A PLAN CONSISTENT WITH THIS CHAPTER.

7 (4) THE REVISED PLAN OF OPERATION OR AMENDMENTS TO THE  
8 REVISED PLAN OF OPERATION ARE SUBJECT TO MAJORITY APPROVAL BY THE  
9 BOARD, ARE SUBJECT TO RATIFICATION BY A MAJORITY OF THE MEMBER-  
10 SHIP HAVING A VOTE, WITH VOTING RIGHTS BEING APPORTIONED ACCORD-  
11 ING TO THE PREMIUMS CHARGED IN SECTION 3197(1)(E), ARE SUBJECT TO  
12 APPROVAL BY THE COMMISSIONER.

13 (5) UPON APPROVAL BY THE COMMISSIONER AND RATIFICATION BY  
14 THE MEMBERS OF THE PLAN SUBMITTED, OR UPON THE PROMULGATION OF A  
15 PLAN BY THE COMMISSIONER, EACH INSURER AUTHORIZED TO WRITE INSUR-  
16 ANCE PROVIDING THE SECURITY REQUIRED BY SECTION 3101(1) IN THIS  
17 STATE, AS DEFINED IN THIS SECTION, IS BOUND BY AND SHALL FORMALLY  
18 SUBSCRIBE TO AND PARTICIPATE IN THE PLAN APPROVED AS A CONDITION  
19 OF MAINTAINING ITS AUTHORITY TO TRANSACT INSURANCE IN THIS  
20 STATE.

21 (6) AN ANNUAL REPORT OF THE OPERATIONS OF THE ASSOCIATION IN  
22 A FORM AND DETAIL AS MAY BE DETERMINED BY THE BOARD SHALL BE FUR-  
23 NISHED TO EACH MEMBER.

24 SEC. 3189. THE ASSOCIATION SHALL PROVIDE PAYMENT FOR AND  
25 MANAGEMENT OF AND EACH MEMBER SHALL ACCEPT PAYMENT FOR AND MAN-  
26 AGEMENT OF 100% OF THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER  
27 PERSONAL PROTECTION INSURANCE COVERAGES IN EXCESS OF \$250,000.00

1 IN EACH LOSS OCCURRENCE. AN ULTIMATE LOSS IS INCURRED BY THE  
2 ASSOCIATION ON THE DATE THAT THE LOSS OCCURS. THE ASSOCIATION  
3 SHALL MANAGE EACH CLAIM THAT IT PROVIDES PAYMENT FOR AND THAT IT  
4 MAY BE ANTICIPATED TO PROVIDE PAYMENT FOR UNDER A REPORT RECEIVED  
5 BY THE ASSOCIATION UNDER PROCEDURES ESTABLISHED BY  
6 SECTION 3197(1)(B) AND (C).

7 SEC. 3191. AN INSURER WHOSE MEMBERSHIP IN THE ASSOCIATION  
8 HAS BEEN TERMINATED BY WITHDRAWAL CONTINUES TO BE BOUND BY THE  
9 PLAN OF OPERATION, AND UPON WITHDRAWAL, ALL UNPAID PREMIUMS THAT  
10 HAVE BEEN CHARGED TO THE WITHDRAWING MEMBER ARE PAYABLE AS OF THE  
11 EFFECTIVE DATE OF THE WITHDRAWAL.

12 SEC. 3193. AN UNSATISFIED NET LIABILITY TO THE ASSOCIATION  
13 OF AN INSOLVENT MEMBER IS ASSUMED BY AND APPORTIONED AMONG THE  
14 REMAINING MEMBERS OF THE ASSOCIATION AS PROVIDED IN THE PLAN OF  
15 OPERATION. THE ASSOCIATION HAS ALL RIGHTS ALLOWED BY LAW ON  
16 BEHALF OF THE REMAINING MEMBERS AGAINST THE ESTATE OR FUNDS OF  
17 THE INSOLVENT MEMBER FOR SUMS DUE THE ASSOCIATION.

18 SEC. 3195. IF A MEMBER IS MERGED OR CONSOLIDATED INTO  
19 ANOTHER INSURER OR ANOTHER INSURER HAS REINSURED A MEMBER'S  
20 ENTIRE BUSINESS THAT PROVIDES THE SECURITY REQUIRED BY SECTION  
21 3101(1) IN THIS STATE, THE MEMBER AND SUCCESSORS IN INTEREST OF  
22 THE MEMBER REMAIN LIABLE FOR THE MEMBER'S OBLIGATIONS.

23 SEC. 3197. (1) THE ASSOCIATION SHALL DO ALL OF THE FOLLOW-  
24 ING ON BEHALF OF THE MEMBERS OF THE ASSOCIATION:

25 (A) ASSUME ALL PAYMENT AND MANAGEMENT AS PROVIDED IN  
26 SECTION 3189.

1 (B) ESTABLISH PROCEDURES BY WHICH MEMBERS SHALL PROMPTLY  
2 REPORT TO THE ASSOCIATION EACH CLAIM THAT, ON THE BASIS OF THE  
3 INJURIES OR DAMAGES SUSTAINED, MAY REASONABLY BE ANTICIPATED TO  
4 INVOLVE THE ASSOCIATION IF THE MEMBER IS ULTIMATELY HELD LEGALLY  
5 LIABLE FOR THE INJURIES OR DAMAGES. SOLELY FOR THE PURPOSE OF  
6 REPORTING CLAIMS, THE MEMBER SHALL IN ALL INSTANCES CONSIDER  
7 ITSELF LEGALLY LIABLE FOR THE INJURIES OR DAMAGES. THE MEMBER  
8 SHALL ALSO ADVISE THE ASSOCIATION OF SUBSEQUENT DEVELOPMENTS  
9 LIKELY TO MATERIALLY AFFECT THE INTEREST OF THE ASSOCIATION IN  
10 THE CLAIM.

11 (C) ESTABLISH PROCEDURES BY WHICH THE ASSOCIATION ASSUMES  
12 RESPONSIBILITY FOR MANAGING EACH CLAIM THAT IS REASONABLY ANTICI-  
13 PATED TO INVOLVE THE ASSOCIATION REGARDLESS OF WHICH MEMBER OF  
14 THE ASSOCIATION MAY ULTIMATELY BE HELD LIABLE FOR THE INJURIES OR  
15 DAMAGES.

16 (D) MAINTAIN RELEVANT LOSS AND EXPENSE DATA RELATIVE TO ALL  
17 LIABILITIES OF THE ASSOCIATION AND REQUIRE EACH MEMBER TO FURNISH  
18 STATISTICS, IN CONNECTION WITH LIABILITIES OF THE ASSOCIATION, AT  
19 THE TIMES AND IN THE FORM AND DETAIL REQUIRED BY THE REVISED PLAN  
20 OF OPERATION.

21 (E) IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION, CAL-  
22 CULATE AND CHARGE TO MEMBERS OF THE ASSOCIATION A TOTAL PREMIUM  
23 SUFFICIENT TO COVER THE EXPECTED LOSSES AND EXPENSES THE ASSOCIA-  
24 TION WILL LIKELY INCUR DURING THE PERIOD THAT THE PREMIUM IS  
25 APPLICABLE. THE PREMIUM SHALL INCLUDE AN AMOUNT TO COVER  
26 INCURRED BUT NOT REPORTED LOSSES FOR THE PERIOD AND MAY BE  
27 ADJUSTED FOR ANY EXCESS OR DEFICIENT PREMIUMS FROM PREVIOUS

1 PERIODS. EXCESSES OR DEFICIENCIES FROM PREVIOUS PERIODS MAY BE  
2 FULLY ADJUSTED IN A SINGLE PERIOD OR MAY BE ADJUSTED OVER SEVERAL  
3 PERIODS IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION. EACH  
4 MEMBER SHALL BE CHARGED AN AMOUNT EQUAL TO THAT MEMBER'S TOTAL  
5 EARNED CAR YEARS OF INSURANCE PROVIDING THE SECURITY REQUIRED BY  
6 SECTION 3101(1) OR 3103(1), WRITTEN IN THIS STATE DURING THE  
7 PERIOD TO WHICH THE PREMIUM APPLIES, MULTIPLIED BY THE AVERAGE  
8 PREMIUM PER CAR. THE AVERAGE PREMIUM PER CAR SHALL BE THE TOTAL  
9 PREMIUM CALCULATED DIVIDED BY THE TOTAL EARNED CAR YEARS OF  
10 INSURANCE PROVIDING THE SECURITY REQUIRED BY SECTION 3101(1) OR  
11 3103(1) WRITTEN IN THIS STATE OF ALL MEMBERS DURING THE PERIOD TO  
12 WHICH THE PREMIUM APPLIES. AS USED IN THIS SUBDIVISION, "CAR"  
13 INCLUDES A MOTORCYCLE.

14 (F) REQUIRE AND ACCEPT THE PAYMENT OF PREMIUMS FROM MEMBERS  
15 OF THE ASSOCIATION AS PROVIDED FOR IN THE PLAN OF OPERATION. THE  
16 ASSOCIATION SHALL DO EITHER OF THE FOLLOWING:

17 (i) REQUIRE PAYMENT OF THE PREMIUM IN FULL WITHIN 45 DAYS  
18 AFTER THE PREMIUM CHARGE.

19 (ii) REQUIRE PAYMENT OF THE PREMIUMS TO BE MADE PERIODICALLY  
20 TO COVER THE ACTUAL CASH OBLIGATIONS OF THE ASSOCIATION.

21 (G) RECEIVE AND DISTRIBUTE ALL SUMS REQUIRED BY THE OPERA-  
22 TION OF THE ASSOCIATION.

23 (H) ESTABLISH PROCEDURES FOR REVIEWING CLAIMS PROCEDURES AND  
24 PRACTICES OF MEMBERS OF THE ASSOCIATION. IF THE CLAIMS PROCE-  
25 DURES OR PRACTICES OF A MEMBER ARE CONSIDERED INADEQUATE TO PROP-  
26 ERLY SERVICE THE LIABILITIES OF THE ASSOCIATION, THE ASSOCIATION  
27 MAY UNDERTAKE OR MAY CONTRACT WITH ANOTHER PERSON, INCLUDING

1 ANOTHER MEMBER, TO ADJUST OR ASSIST IN THE ADJUSTMENT OF CLAIMS  
2 FOR THE MEMBER ON CLAIMS THAT CREATE A POTENTIAL LIABILITY TO THE  
3 ASSOCIATION AND MAY CHARGE THE COST OF THE ADJUSTMENT TO THE  
4 MEMBER.

5 (2) 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 SEC. 3199. IN ADDITION TO OTHER POWERS GRANTED TO THE ASSO-  
9 CIATION BY THIS CHAPTER, THE ASSOCIATION MAY DO ALL OF THE  
10 FOLLOWING:

11 (A) SUE AND BE SUED IN THE NAME OF THE ASSOCIATION. A JUDG-  
12 MENT AGAINST THE ASSOCIATION DOES NOT CREATE ANY DIRECT LIABILITY  
13 AGAINST THE INDIVIDUAL MEMBERS OF THE ASSOCIATION. THE ASSOCIA-  
14 TION MAY PROVIDE FOR THE INDEMNIFICATION OF ITS MEMBERS, MEMBERS  
15 OF THE BOARD OF DIRECTORS OF THE ASSOCIATION, AND OFFICERS,  
16 EMPLOYEES, AND OTHER PERSONS LAWFULLY ACTING ON BEHALF OF THE  
17 ASSOCIATION.

18 (B) REINSURE ALL OR ANY PORTION OF ITS POTENTIAL LIABILITY  
19 WITH REINSURERS LICENSED TO TRANSACT INSURANCE IN THIS STATE OR  
20 APPROVED BY THE COMMISSIONER.

21 (C) PROVIDE FOR APPROPRIATE HOUSING, EQUIPMENT, AND PERSON-  
22 NEL NECESSARY TO ASSURE THE EFFICIENT OPERATION OF THE  
23 ASSOCIATION.

24 (D) PURSUANT TO THE PLAN OF OPERATION, ADOPT REASONABLE  
25 RULES FOR THE ADMINISTRATION OF THE ASSOCIATION, ENFORCE THOSE  
26 RULES, AND DELEGATE AUTHORITY, AS THE BOARD CONSIDERS NECESSARY

1 TO ASSURE THE PROPER ADMINISTRATION AND OPERATION OF THE  
2 ASSOCIATION CONSISTENT WITH THE PLAN OF OPERATION.

3 (E) CONTRACT FOR GOODS AND SERVICES, INCLUDING INDEPENDENT  
4 CLAIMS MANAGEMENT, ACTUARIAL, INVESTMENT, AND LEGAL SERVICES,  
5 FROM OTHERS WITHIN THIS STATE OR OUTSIDE OF THIS STATE TO ASSURE  
6 THE EFFICIENT OPERATION OF THE ASSOCIATION.

7 (F) HEAR AND DETERMINE COMPLAINTS OF A COMPANY OR OTHER  
8 INTERESTED PARTY CONCERNING THE OPERATION OF THE ASSOCIATION.

9 (G) PERFORM OTHER ACTS NOT SPECIFICALLY ENUMERATED IN THIS  
10 SECTION THAT ARE NECESSARY OR PROPER TO ACCOMPLISH THE PURPOSES  
11 OF THE ASSOCIATION AND THAT ARE NOT INCONSISTENT WITH THIS SEC-  
12 TION OR THE PLAN OF OPERATION.

13 Sec. 7935. (1) Each insured entitled to the protection of  
14 this chapter shall cooperate with the association in accordance  
15 with the insured's policy in the same manner as the insured would  
16 have been required to cooperate with his or her insurer if it  
17 were not in receivership. Each insured shall be considered to  
18 have assigned to the association any right to make claim against  
19 the receiver for a refund of unearned premium for the period of  
20 coverage provided by the association beginning on the date of  
21 receivership.

22 (2) An insured or claimant entitled to the benefits of this  
23 chapter ~~shall be considered to have~~ IS assigned to the associa-  
24 tion, to the extent of any payment received from the association,  
25 his or her rights against the estate of the insolvent insurer,  
26 rights under the policy under which his or her claim arose, and  
27 any other rights the insured or claimant ~~may have~~ HAS against

1 another person for payment of the covered claim paid by the  
2 association.

3 (3) The association ~~shall be~~ IS entitled to receive, to  
4 the extent of the amount paid or payable by the association by  
5 reason of a covered claim, any amount recoverable by the receiver  
6 or the insolvent insurer by way of right of indemnification from  
7 the catastrophic claims association created in section ~~3104~~  
8 3183.

9 (4) The association ~~shall be~~ IS entitled to any option to  
10 take possession of, right of salvage in, or other right to pro-  
11 ceeds from the sale or disposition of insured property ~~which~~  
12 THAT is the subject matter of a covered claim, to which the  
13 insolvent insurer would have been entitled had it paid the  
14 claim.

15 Sec. 8103. As used in this chapter:

16 (a) "Ancillary state" means any state other than a domicili-  
17 ary state.

18 (b) "Creditor" is a person having a claim against the insur-  
19 er, whether matured or unmatured, liquidated or unliquidated,  
20 secured or unsecured, absolute, fixed, or contingent.

21 (c) "Delinquency proceeding" means a proceeding instituted  
22 against an insurer for the purpose of liquidating, rehabilitat-  
23 ing, reorganizing, or conserving ~~such~~ THAT insurer, and a sum-  
24 mary proceeding under section 8109 or 8110. "Formal delinquency  
25 proceeding" means any liquidation or rehabilitation proceeding.

1 (d) "Domiciliary state" means the state in which an insurer  
2 is incorporated or organized, or, in the case of an alien  
3 insurer, its state of entry.

4 (e) "Fair consideration" is given for property or an obliga-  
5 tion pursuant to either of the following:

6 (i) If in exchange for the property or obligation, as a fair  
7 equivalent of the property or obligation and in good faith, prop-  
8 erty is conveyed or services are rendered or an obligation is  
9 incurred or an antecedent debt is satisfied.

10 (ii) If the property or obligation is received in good faith  
11 to secure a present advance or antecedent debt in an amount not  
12 disproportionately small as compared to the value of the property  
13 or obligation obtained.

14 (f) "Foreign country" means any other jurisdiction not in  
15 any state.

16 (g) "General assets" means all property, real, personal, or  
17 otherwise, not specifically mortgaged, pledged, deposited, or  
18 otherwise encumbered, for the security or benefit of specified  
19 persons or classes of persons. As to specifically encumbered  
20 property, "general assets" includes all property or its proceeds  
21 in excess of the amount necessary to discharge the sum or sums  
22 secured by the property. Assets held in trust and on deposit for  
23 the security or benefit of all policyholders or all policyholders  
24 and creditors, in more than a single state, shall be treated as  
25 general assets. Amounts due an insolvent insurer as indemnifica-  
26 tion from the catastrophic claims association created in section  
27 ~~3184~~ 3183 shall not be considered to be assets of the



1 receivership, but shall be paid directly to the property and  
2 casualty guaranty association under section 7935.

3       (h) "Guaranty association" means the Michigan property and  
4 casualty guaranty association, the worker's compensation  
5 self-insurance security fund, the Michigan life and health insur-  
6 ance guaranty association, and any other similar entity now or  
7 hereafter created by the legislature of this state for the pay-  
8 ment of claims of insolvent insurers. "Foreign guaranty  
9 association" means any similar entities now in existence or here-  
10 after created by the legislature of any other state.

11       (i) "Insolvency" or "insolvent" means:

12       (i) For an insurer issuing only assessable fire insurance  
13 policies:

14       (A) The inability to pay an obligation within 30 days after  
15 it becomes payable.

16       (B) If an assessment is made within 30 days after the date  
17 in subparagraph (i)(A), the inability to pay an obligation 30  
18 days following the date specified in the first assessment notice  
19 issued after the date of loss.

20       (ii) For an insurer, other than an insurer under  
21 subparagraph (i), the inability to pay its obligations when they  
22 are due or when admitted assets do not exceed liabilities plus  
23 the greater of either of the following:

24       (A) Any capital and surplus required by law for its  
25 organization.

26       (B) The total par or stated value of its authorized and  
27 issued capital stock.

1       (iii) For purposes of this subdivision, "liabilities"  
2 ~~shall~~ include, but ARE not ~~be~~ limited to, reserves required  
3 by statute or by rule or specific requirements imposed by the  
4 commissioner upon an insurer at the time of admission or subse-  
5 quent to admission.

6       (j) "Preferred claim" means a claim that receives priority  
7 of payment from the general assets of the insurer under this  
8 chapter.

9       (k) "Receiver" means receiver, liquidator, rehabilitator, or  
10 conservator as the context requires.

11       (l) "Reciprocal state" means a state other than this state  
12 in which all of the following occurs:

13       (i) In substance and effect sections 8118(1), 8152, 8153,  
14 8155, 8156, and 8157 are in force.

15       (ii) Provisions requiring that the commissioner or equiva-  
16 lent official be the receiver of a delinquent insurer are in  
17 force.

18       (iii) Some provision for the avoidance of fraudulent convey-  
19 ances and preferential transfers are in force.

20       (m) "Secured claim" means a claim secured by mortgage, trust  
21 deed, pledge, deposit as security, escrow, or otherwise, but not  
22 ~~including~~ a special deposit claim or claim against general  
23 assets. The term also includes claims that have become liens  
24 upon specific assets by reason of judicial process.

25       (n) "Special deposit claim" means a claim secured by a  
26 deposit made pursuant to statute for the security or benefit of a

1 limited class or classes of persons, but not ~~including~~ a claim  
2 secured by general assets.

3 (o) "State" means a state, district, or territory of the  
4 United States.

5 (p) "Transacting business" includes any of the following  
6 acts, whether effected by mail or otherwise:

7 (i) ~~The issuance or delivery of~~ ISSUING OR DELIVERING con-  
8 tracts of insurance to persons ~~resident~~ RESIDING in this  
9 state.

10 (ii) ~~The solicitation of~~ SOLICITING applications for  
11 insurance contracts or other negotiations preliminary to the exe-  
12 cution of insurance contracts.

13 (iii) ~~The collection of~~ COLLECTING premiums, membership  
14 fees, assessments, or other consideration for insurance  
15 contracts.

16 (iv) ~~The transaction of~~ TRANSACTING matters subsequent to  
17 execution of insurance contracts and arising out of them.

18 (v) Operating under a certificate of authority, as an insur-  
19 er, issued by the commissioner.

20 (q) "Transfer" ~~shall include~~ INCLUDES the sale and every  
21 other and different mode, direct or indirect, of disposing of or  
22 of parting with property or with an interest in property or with  
23 the possession of property or of fixing a lien upon property or  
24 upon an interest in property, absolutely or conditionally, volun-  
25 tarily, by or without judicial proceedings. The retention of a  
26 security title to property delivered to a debtor ~~shall be~~  
27 ~~considered~~ IS a transfer suffered by the debtor.

1       (r) "Trusteed assets" means the assets of an alien insurer  
2 and U.S. branch domiciled in this state and maintained in trust  
3 pursuant to section 411(4).

4       Section 2. This amendatory act shall take effect January 1,  
5 1996.